

**Maintaining dignity and reducing stigma for persons who need  
mental healthcare**

**by**

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Submitted in partial fulfilment of the requirements for the degree

Magister Legum

(Medical Law and Ethics)

in the Faculty of Law,

University of Pretoria

December 2018

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# Chapter 1

## Introduction

### 1.1 Background

In spite of the universal appeal of dignity, it is a topic that is seldom discussed.<sup>1</sup> Although people may not have words to describe the concept of dignity, all have an internal experience of it as they know what it feels like to be treated as inferior, discriminated against, ignored, misunderstood, criticised and excluded, therefore, treated in an undignified manner.<sup>2</sup> The feeling of humiliation that accompanies being treated poorly, in subtle and less subtle ways, prevents people from taking the actions needed to recover from violations of their dignity, such as exposing it, validating them, and giving it the attention it deserves.<sup>3</sup>

The stigma of mental illness is one of the most harmful obstacles to improved global mental health.<sup>4</sup> A great deal of the stigma associated with mental disorders arises from the belief that people can 'pull themselves together' and then recover from a mental disorder.<sup>5</sup> It is important to understand stigma in order to reduce its negative impact in the context of persons undergoing mental health treatment.<sup>6</sup>

Worldwide, approximately 450 million people suffer from diagnosable neuropsychiatric conditions, while many more experience misery and psychological difficulties.<sup>7</sup> Studies undertaken in developed and developing countries show that more than 25% of people present with one or more mental or behavioural disorder during their lifetime, with the most common diagnoses being

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<sup>1</sup> D Hicks 7 (Aug 2011) 'Why dignity matters' - 'The important role dignity plays in our lives and relationships' available at <https://www.psychologytoday.com/us/blog/dignity/201108/why-dignity-matters> (accessed 10 November 2018).

<sup>2</sup> Hicks (n 1 above).

<sup>3</sup> As above.

<sup>4</sup> M Freeman 'Mental health and social change' in M Visser *Contextualizing Community Psychology in South Africa* (2007) 185.

<sup>5</sup> Staff Reporter (21 July 2017) 'Mental Health: a serious issue in South Africa. Health and wellness' available at <https://www.iol.co.za/lifestyle/health/mental-health-a-serious-issue-in-south-africa-10400056> (accessed 10 July 2018).

<sup>6</sup> PW Corrigan, BG Druss & DA Perlick 'The impact of mental health illness stigma on seeking and participating in mental healthcare' available at <https://www.ncbi.nlm.nih.gov/pubmed/26171956> (accessed 11 October 2017).

<sup>7</sup> Freeman in Visser (n 4 above). 178, 179.

depression, anxiety and substance abuse.<sup>8</sup> South Africa shows prevalence rates of between 10% and 40% of mental or behavioural disorders.<sup>9</sup>

It is considered that psychiatrically-ill patients are vulnerable and have poor insight and judgment.<sup>10</sup> The psychiatrist<sup>11</sup> should therefore act as an advocate for patient rights, uphold good values and respect the patient's self-determination as far as possible.<sup>12</sup> Special moral and bioethical deliberation is imperative when diseases of the brain are involved.<sup>13</sup>

South Africa is in the process of undergoing a transformation from a formal, positivistic vision of law to a substantive vision of law and the single most significant factor in this transformation is the existence of constitutional values.<sup>14</sup> Courts, and in particular the Constitutional Court, must decide cases on the basis of the values of human dignity, equality and freedom.<sup>15</sup> Of these values, human dignity, takes pride of place.<sup>16</sup> In the South African Constitutional Court judgment of *S v Makwanyane and Another*<sup>17</sup> the view was expressed that recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings.<sup>18</sup> Human beings, therefore, are entitled to be treated as worthy of respect and concern.<sup>19</sup>

## 1.2 Research problem

The research problem investigated in this dissertation may be phrased as follows:

- How may the dignity of persons who need mental<sup>20</sup> health care be preserved?  
and

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<sup>8</sup> As above.

<sup>9</sup> As above.

<sup>10</sup> W Pienaar 'Ethics in mental healthcare' in K Moodley (ed) (2011) *Medical ethics, law and human rights. A South African perspective* 21.

<sup>11</sup> Or any other mental health care worker, whether on primary or secondary level.

<sup>12</sup> Pienaar in Moodley (n 10 above) 21.

<sup>13</sup> As above.

<sup>14</sup> N Goolam 'Human Dignity – Our supreme constitutional *value*' *Potchefstroom Electronic Law Journal* available at <https://www.ajol.info/index.php/pelj/article/view%20File/43490/27025> (accessed 28 June 2018).

<sup>15</sup> Goolam (n 14 above).

<sup>16</sup> As above.

<sup>17</sup> 'S v Makwanyane' (last edited 23 August 2017) available at [https://en.wikipedia.org/wiki/S\\_v\\_Makwanyane](https://en.wikipedia.org/wiki/S_v_Makwanyane) (accessed 11 May 2018).

<sup>18</sup> Goolam (n 14 above).

<sup>19</sup> As above.

<sup>20</sup> In the context of this dissertation 'psychological' healthcare also pertains to mental healthcare and psychiatric healthcare.

- How may the stigma that attaches to persons who need mental healthcare be eradicated?

### **1.3 Assumptions**

The assumption is that some persons needing mental healthcare - whether on a basic level or because of a more serious psychological condition - shy away from looking for psychological help. They shy away due to their fears of losing their dignity and the stigma that may be attached to them and the treatment regime they must follow.

This study expects to find proof that in some instances persons who need mental healthcare are wary of seeing it through, due to fears of losing their dignity and because of the associated stigma.

These assumptions are supported by the results of a literature review.

### **1.4 Research questions**

- 1) What is the significance at a personal level of maintaining dignity and reducing stigma for persons who need mental healthcare?
- 2) What is meant by maintaining dignity and reducing stigma in the context of mental healthcare?
- 3) What steps can be taken by law to maintain dignity and reduce stigma for persons who need mental healthcare?

### **1.5 Motivation**

This study is motivated by the considerable importance of maintaining a person's dignity, whatever the circumstances. I wish to assist in building a culture of dignity for persons who need, and therefore seek, mental healthcare. My secondary aim is to assist in reducing the stigma attached to persons who require and seek mental healthcare.

### **1.6 Literature review**

#### **1.6.1 Research question 1:**

What is the significance at a personal level of maintaining dignity and reducing stigma for persons who need mental healthcare?

Hicks states that dignity is the inherent value and worth of humans and that everyone is born with it.<sup>21</sup> She contends that human beings have a sincere desire to be treated as something of value and that this desire is our highest common denominator.<sup>22</sup>

Victor Frankl<sup>23</sup> reinstated the humanity of the mental patient.<sup>24</sup> He believed that those diagnosed as psychotic and mentally deficient are persons, like anyone else and they too, have dignity.<sup>25</sup> He further stated that an incurably psychotic individual may lose his usefulness but yet retain the dignity of a human being.<sup>26</sup> Frankl contended that 'the so-called life not worth living does not exist'.<sup>27</sup> The person enduring psychological illness or mental disability conceals a real spiritual person, unassailable by mental disease.<sup>28</sup> Frankl also remarked that only the possibilities to communicate with the outside world are inhibited by mental disease, but that the centre of man remains indestructible.<sup>29</sup> He noted 'And if this were not the case, it would be futile to be a psychiatrist'.<sup>30</sup> Programs for mental health providers may be especially productive for promoting care engagement.<sup>31</sup>

A landmark 1995 judgment of the Constitutional Court of South Africa was the case of *S v Makwanyane and Another*.<sup>32</sup> In this case, it was established that capital punishment was inconsistent with the commitment to human rights as expressed in the interim Constitution.<sup>33</sup> The Court's ruling invalidated section 277(1)(a) of the Criminal Procedure Act 51 of 1977, which made provision for the use of the death penalty, along with any similar provisions in other laws in force in South Africa.<sup>34</sup> Also, the court forbade the government from carrying out the death sentence on any prisoners awaiting execution, ruling that they should stay imprisoned until new

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<sup>21</sup> D Hicks 'What is the real meaning of dignity?' available at <https://www.psychologytoday.com/blog/dignity/201304/what-is-the-real-meaning-dignity-0> (accessed 9 October 2017).

<sup>22</sup> Hicks (n 21 above).

<sup>23</sup> Victor Emil Frankl (26 March 1905 to 2 September 1997) was an Austrian neurologist and a Holocaust survivor. He was the founder of logotherapy, which is a form of existential analysis available at [https://en.wikipedia.org/wiki/Viktor\\_Frankl](https://en.wikipedia.org/wiki/Viktor_Frankl) (accessed 16 March 2018).

<sup>24</sup> T Shantall 'The existential theory of Viktor Frankl (1905- 1998) in W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 450, 451, 455.

<sup>26</sup> Shantall in Meyer, Moore & Viljoen (n 24 above) 450, 451, 455.

<sup>27</sup> As above.

<sup>28</sup> As above.

<sup>29</sup> As above.

<sup>30</sup> As above.

<sup>31</sup> Corrigan, Druss & Perlick (n 6 above).

<sup>32</sup> Available at [https://en.wikipedia.org/wiki/S\\_v\\_Makwanyane](https://en.wikipedia.org/wiki/S_v_Makwanyane) (accessed 11 May 2018).

<sup>33</sup> As above.

<sup>34</sup> As above.

sentences were imposed.<sup>35</sup> This judgment was delivered on 6 June 1995, and it was the newly established Court's 'first politically important and publicly controversial holding'.<sup>36</sup> The court further asserted that the rights to life and dignity were the most important of all human rights and the source of all the other personal rights as contained in Chapter 3 of the interim Constitution.<sup>37</sup> Having been committed to a society built on the recognition and realisation of human rights, the state was required to value these two rights above all others, and to demonstrate such valuation in all its actions, and it included the punishment of criminals.<sup>38</sup> The Court herewith affirmed its commitment to the principle of constitutionalism, more specifically constitutional values such as freedom, dignity and equality, by rejecting the 'arbitrary and capricious' nature of the death penalty.<sup>39</sup>

Corrigan, Druss and Perlick indicate that the construct of stigma is complex.<sup>40</sup> It comprises of the self, the public and structural components.<sup>41</sup> They note that the presence of stigma directly affects people with mental illness, as well their support system, provider network, and their community resources.<sup>42</sup> They further state that various strategies have been developed for defeating the effect of public, self and structural stigma.<sup>43</sup> In addition, mental health literacy, cultural competence, and family engagement campaigns also quell stigma's adverse impact on care seeking.<sup>44</sup> They indicate that a change in policy is essential to overcome the structural stigma which undermines government agendas which are meant to promote mental healthcare.<sup>45</sup> Understanding stigma therefore reduces the negative impact on engaging in psychological treatment.<sup>46</sup>

### **1.6.2 Research question 2:**

What is meant by maintaining dignity and reducing stigma in the context of mental healthcare?

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<sup>35</sup> As above.

<sup>36</sup> As above.

<sup>37</sup> As above.

<sup>38</sup> As above.

<sup>39</sup> As above.

<sup>40</sup> Corrigan Druss & Perlick (n 6 above).

<sup>41</sup> As above.

<sup>42</sup> As above.

<sup>43</sup> As above.

<sup>44</sup> As above.

<sup>45</sup> As above.

<sup>46</sup> As above.

Mental illness is often regarded as 'madness' or human weakness.<sup>47</sup> Sufferers are stigmatised and ridiculed.<sup>48</sup> They are marginalised, pushed out of homes and jobs, neglected, punished, isolated and abused.<sup>49</sup> From the 16<sup>th</sup> century onwards monasteries and prisons gradually transferred the care of persons suffering from mental disorders to special institutions that were established in increasing numbers.<sup>50</sup> Although scientific scepticism started to gradually undermine the belief that mental disturbance was the 'devil's work', most of the early asylums were not much better than concentration camps.<sup>51</sup> Its residents lived and died in conditions of incredible filth and cruelty.<sup>52</sup> The movement towards humane treatment of patients received its first great thrust from the work of Philippe Pinel (1745 - 1826)<sup>53</sup> in France.<sup>54</sup>

Bezuidenhout reminds us of the 1 300 mental health patients who were transferred from the mental healthcare facility, Life Esidimeni, to non-governmental organisations.<sup>55</sup> She remarks that several organisations, among others the South African Depression and Anxiety Group, the Psychological Society of South Africa, the human rights group, Section 27 and the South African Federation for Mental Health, warned against this move.<sup>56</sup> The government nevertheless still transferred these patients to organisations who were not equipped to manage and care for them.<sup>57</sup> As widely known at this stage, the resulting deaths are shocking.<sup>58</sup>

Humanistic theories of and the person-oriented approach in psychology present humans as beings with worth and dignity who actively and consciously strive towards the actualisation of their potential.<sup>59</sup>

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<sup>47</sup> W Pienaar 'Ethics in mental health care' in K Moodley (ed) (2011) *Medical ethics, law and human rights. A South African perspective* 221.

<sup>48</sup> Pienaar in Moodley (n 47 above) 221.

<sup>49</sup> As above.

<sup>50</sup> As above.

<sup>51</sup> As above.

<sup>52</sup> JC Coleman, JN Butcher & RC Carson (1984) *Abnormal psychology and modern Life* 44.

<sup>53</sup> Philippe Pinel (born April 20, 1745, Saint-André, Tarn, France. Died 25 October 1826, Paris) was a French physician who pioneered in the humane treatment of the mentally ill available at <https://www.google.co.za/search?q=philippe+pinel+biography&oq=Philippe+Pinel&aqs=chrome.3.0l6.4184j0j9&sourceid=chrome&ie=UTF-8> (accessed 13 April 2018).

<sup>54</sup> Coleman, Butcher & Carson (n 52 above).

<sup>55</sup> J Bezuidenhout 'Why South Africa is failing mental health patients and what can be done about it' available at [theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445](http://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445) (accessed 13 April 2018).

<sup>56</sup> Bezuidenhout (n 55 above).

<sup>57</sup> As above.

<sup>58</sup> As above.

<sup>59</sup> W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 324.

Critical psychologists<sup>60</sup> believe that ethics should be a joint effort between the service providers and the recipients of these services.<sup>61</sup> The recipients should have an input in defining ethical behaviour and should be afforded the ability to examine whose interests are served by the treatment regimes.<sup>62</sup> The socially-constructed phenomenon of stigma lies at the core of defeating the mental well-being of persons, and it prevents persons with mental illness from obtaining the care and support they require.<sup>63</sup> This may range from gaining employment, accessing services and in many cases, enjoying the right to live outside an institution.<sup>64</sup> Poverty and gender discrimination exacerbate this problem.<sup>65</sup> The eradication of stigma in a community could drastically improve the mental health of a substantial number of people.<sup>66</sup>

### 1.6.3 Research question 3:

What steps may be taken by law to maintain dignity and reduce stigma for persons who need mental healthcare?

Hanafiah and Van Bortel state that a large number of previous studies on the stigma of mental illness implicate that it is more prevalent in Western societies.<sup>67</sup> However, more recently, the World Health Organisation (WHO) suggested that the stigma of mental illness equally affects Western and Asian communities (India, China and Malaysia).<sup>68</sup> In general, it was shown that mental healthcare professionals are aware of stigma and discrimination towards people with mental health difficulties.<sup>69</sup> All participants agreed that the prevalence of the phenomenon in Malaysia is high and this indicates a marked concern of the possible entrapment in vicious cycles.<sup>70</sup>

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<sup>60</sup> 'Critical psychology challenges mainstream psychology and attempts to apply psychological understandings in more progressive ways, often looking towards social change as a means of preventing and treating psychopathology' available at [https://en.wikipedia.org/wiki/Critical\\_psychology](https://en.wikipedia.org/wiki/Critical_psychology) (accessed 13 April 2018).

<sup>61</sup> G Viljoen & L Eskell-Blokland 'Critical approaches in community psychology' in Visser (ed) (2007) *Contextualizing community psychology in South Africa* 57.

<sup>62</sup> Viljoen & Eskell-Blokland in Visser (n 61 above) 57.

<sup>63</sup> Freeman in Visser (n 4 above) 185.

<sup>64</sup> As above.

<sup>65</sup> As above.

<sup>66</sup> As above.

<sup>67</sup> AN Hanafiah & T Van Bortel 'A qualitative exploration of the perspectives of mental health professionals on stigma and discrimination of mental illness in Malaysia' available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4359579/> (accessed 11 May 2018).

<sup>68</sup> Hanafiah & Bortel (n 67 above).

<sup>69</sup> As above.

<sup>70</sup> As above

The four main groups who were reported to discriminate most towards people with mental health problems are family, friends, employers, and healthcare-related alliances.<sup>71</sup> Despite the role of healthcare-related alliances in caring for patients, health workers such as nurses were found to label patients with derogatory terms such as 'crazy' and 'nuts', and they often undermined patients' chances of recovering from their condition.<sup>72</sup>

Since the stigma of mental illness was demonstrated to be increasingly debilitating for people with mental health problems, initiatives must be taken to deter further complications.<sup>73</sup> Wider advocacy and the government's role in policy-making and legislation are central to addressing the stigma of mental illness.<sup>74</sup>

Education and creating awareness are perceived to be critical factors in mental health advocacy and using mass media and involving non-governmental organisations are essential.<sup>75</sup> The government leads most of the initiatives against stigma, and non-government organisations can complement these programmes through close collaboration and support for such activities.<sup>76</sup>

Advocacy aside, law and policy are essential instruments in addressing the stigma of mental illness.<sup>77</sup> In Malaysia, the Mental Health Act 2001, Mental Health Operational Services Policy 2011 and National Mental Health Policy 2013 are the current operational legislation and policies respectively.<sup>78</sup>

In South Africa, the concept of values is entrenched in the Constitution<sup>79</sup> and, consequently, the Constitutional Court has committed itself to a purposive approach to the interpretation of the Bill of Rights.<sup>80</sup> The values promoted by the Constitution are human dignity, equality and freedom.<sup>81</sup>

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<sup>71</sup> As above.

<sup>72</sup> As above.

<sup>73</sup> As above.

<sup>74</sup> As above.

<sup>75</sup> As above.

<sup>76</sup> As above.

<sup>77</sup> As above.

<sup>78</sup> As above.

<sup>79</sup> The Constitution of the Republic of South Africa, 1996.

<sup>80</sup> Section 39 (2) of the Constitution requires that the spirit, meaning and objects of the Bill of Rights be considered when developing laws.

<sup>81</sup> The Constitution of the Republic of South Africa, 1996.

It is submitted that the Constitution<sup>82</sup> and the values it supports can be used as a point of departure for determining policy related to mental healthcare in South Africa.

Community psychology<sup>83</sup> may be employed to address the issue of stigma, which is one of the most guileful obstacles to mental healthcare.<sup>84</sup> There are three critical principles of good practice spanning different approaches.<sup>85</sup> They are the development of a sense of community, participatory decision making and empowerment of persons through the process of intervention.<sup>86</sup>

Involving persons with mental health issues and their families directly in addressing the problem is likely to render the most significant impact on outcomes.<sup>87</sup> The intervener may, therefore, mobilise mentally ill persons and/or their families to address the issue of stigma and discrimination.<sup>88</sup> Short-term objectives of community campaigns are to educate the public about mental illness, calls for greater tolerance for people with mental illness and calls for local businesses to employ people with mental disabilities as part of their employment quota of disabled persons.<sup>89</sup> Medium-term objectives of community campaigns could entail establishing an ongoing organisation operated and managed by people with mental illness in order to take up issues concerning the mentally ill and developing links with international organisations.<sup>90</sup> The World Dignity Project is an example of an international project.<sup>91</sup> Longer-term community campaign objectives include lobbying government for improved legislation and rights for persons with mental illness and improved community services for mentally ill persons, allowing them to live independently with

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<sup>82</sup> As above.

<sup>83</sup> M Visser 'Community psychology' in M Visser (ed) (2007) *Contextualizing community psychology in South Africa* 5. It is difficult to capture the complexities inherent in the theory and practice of Community Psychology in a single definition. Writer therefore provides two definitions: 'Community Psychology is about an attempt to find alternatives dealing with deviance from societal-based norms...it is an attempt to support every person's right to be different without the risk of suffering material and psychological sanctions'. 'Community psychology focuses on social issues, social institutions and other settings that influence groups and organisations. The goal is to optimise the wellbeing and alternative interventions designed in collaboration with affected community members'.

<sup>84</sup> Freeman in Visser (n 4 above) 185.

<sup>85</sup> As above.

<sup>86</sup> As above.

<sup>87</sup> As above.

<sup>88</sup> As above.

<sup>89</sup> As above.

<sup>90</sup> As above.

<sup>91</sup> Hicks (n 1 above).

their families, instead of in institutions.<sup>92</sup> However, reaching the indicated goals can be extremely challenging.<sup>93</sup>

## **1.7 Methodology**

Information is gained through a literature review, specifically by conducting a desktop review.

## **1.8 Chapter outline**

### Chapter 2: Clarification of concepts

Chapter 2 provides definitions, concepts and explanations of the subject matter covered in this dissertation. The methodology and approach of gaining the appropriate material are also specified. This chapter serves as a point of departure for subsequent chapters.

### Chapter 3: A literature review from a psychological perspective:

Chapter 3 reviews and focuses on literature with psychological content that deals with the problem of maintaining dignity and reducing stigma for some persons seeking mental healthcare. A gap in the reviewed literature is identified, and new insights are provided in order to address the inadequacy in this field of study.<sup>94</sup>

### Chapter 4: Medico-legal perspectives on dignity as a moral and constitutional value

Chapter 4 offers medico-legal perspectives on a person's dignity as a moral and constitutional value.

Sikri<sup>95</sup> states that most constitutions recognise and lay down specific provisions on human rights, with these human rights being based on human dignity.<sup>96</sup> The concept of human dignity in itself dates back thousands of years.<sup>97</sup> Historically, human dignity, as a concept, originated in various

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<sup>92</sup> Freeman in Visser (n 4 above) 185.

<sup>93</sup> As above.

<sup>94</sup> University of Leicester available at <https://www2.le.ac.uk/projects/oer/oers/ssds/oers/research-skills/Research%20skillscg.pdf> (accessed 13 April 2018).

<sup>95</sup> AK Sikri 'Human dignity as a constitutional value' available at <http://blog.hawaii.edu/elp/files/2016/06/HUMAN-DIGNITY-HAWAI.pdf> (accessed 13 April 2018).

<sup>96</sup> Sikri (n 95 above).

<sup>97</sup> As above.

religions as an important component of their theological approach.<sup>98</sup> Later, it was also influenced by philosophers who advanced human dignity in their contemplations.<sup>99</sup> After the Second World War, constitutional and international legal text started adopting the concept, and in this manner, human dignity became recognised as a constitutional value and a constitutional right.<sup>100</sup> Legal understanding is influenced by theological and philosophical views, notwithstanding these two not being identical.<sup>101</sup> Over time, human dignity has found its way through constitutionalism, whether written or unwritten.<sup>102</sup> Dignity plays an essential role in human rights, and this is not only accepted by jurists, but it is also given authoritative approval by the courts.<sup>103</sup>

## Chapter 5: The effect of the Constitution

Bezuidenhout indicates that South Africa has a history of being unkind to its vulnerable populations and that this includes those with mental disorders.<sup>104</sup>

Kotzé, Du Plessis and Barnard-Naudé indicate that the Constitution is the source of constitutional values, fundamental rights, and the organisation, operation and powers of government.<sup>105</sup> In addition, it provides for a number of state institutions supporting a constitutional democracy, such as, among others, the South African Human Rights Commission.<sup>106</sup>

Chapter 5 thus deals with dignity as underpinned by the Constitution, and the influence of the Constitution on a number of underlying themes and principles in medical law and ethics, and the enforceability of dignity as a basic human right.

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<sup>98</sup> As above.

<sup>99</sup> As above.

<sup>100</sup> As above.

<sup>101</sup> As above.

<sup>102</sup> As above.

<sup>103</sup> As above.

<sup>104</sup> Bezuidenhout (n 55 above).

<sup>105</sup> L Kotzé, J Du Plessis & J Barnard-Naudé 'Sources of law and legal skills in South Africa' in T Humby, J Du Plessis & J Barnard-Naudé (2016)

*Introduction to Law and Legal Skills in South Africa. Sources of law and legal authority* 125.

<sup>106</sup> J Mahler- 'Legal authors' in T Humby, L Kotzé & L Du Plessis (eds)(2016) 278. 'The South African Human Rights Commission (SAHRC) is created under the Constitution and is regulated by the Human Rights Commission Act. The Commission has power to investigate and report instances of the violation of human rights in South Africa. The body also undertakes research and education initiatives regarding human rights, and constitutional and democracy issues. It does the above by, amongst others, requiring relevant organs of state to provide the Commission with information on measures taken to realise the rights of the Bill of Rights'.

## Chapter 6: Conclusion and recommendations

Chapter 6 provides conclusions based on insights gained during this research. Recommendations based on the results of this study will be provided. It is acknowledged that these recommendations may have implementation limitations.<sup>107</sup>

In chapter 2, below, I turn to an examination of the most significant concepts used in the study in order to arrive at a measure of clarification of those concepts.

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<sup>107</sup> Learning Support Centres in Higher Education available at [http://www.lsche.net/?page\\_id=1541](http://www.lsche.net/?page_id=1541) (accessed 13 April 2018).

## Chapter 2 Clarification of concepts

*'We are the aged  
Forbidden to pass among the young  
we are the deceivers  
caged in by the righteous  
we are the insane  
walled off by the sane*

*You, you are the young  
the righteous  
the sane,  
If by some quirk  
you must enter our colony  
we will accept you*

*For we are the aged  
we are the deceivers  
we are the insane  
and know full well  
who we are'.*

(Patrick George Harrison)<sup>1</sup>

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<sup>1</sup> From 'Visions of a Madman' used in ch 1 of JC Coleman, JN Butcher & RC Carson (1984) *Abnormal Psychology and Modern Life* 14.

## 1. Introduction

The concept of dignity is an abstract construct inviting many definitions and interpretations. Also, human values, such as maintaining the dignity of a person, are varied and complicated. Confronting this concept is therefore complex and challenging.

This chapter explains concepts and terms that are used throughout the dissertation.

## 2. Concepts

### 2.1 Dignity

Hicks writes that dignity is an inherent value and part of our worth as human beings and that everyone is born with it.<sup>2</sup> She contends that human beings have a deep desire to be treated as something of value and that this desire is our highest common denominator.<sup>3</sup>

Dignity is independent of office, social class and citizenship, ethnic heritage, religious affiliation, gender, race, sexual orientation or any other factor, except for the basic human capacities and dispositions which are required to be a rational and autonomous person.<sup>4</sup>

Victor Frankl<sup>5</sup> reinstated the humanity of the mental healthcare patient.<sup>6</sup> Frankl felt that those diagnosed as psychotic and mentally deficient are persons, like everyone else and that they too have dignity.<sup>7</sup> He further stated that an incurably psychotic individual may lose his or her usefulness but still retain the dignity of a human being.<sup>8</sup> Frankl contended that 'the so-called life not worth living does not exist'.<sup>9</sup> The person enduring psychological illness or mental disability conceals a real spiritual

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<sup>2</sup> D Hicks 'What is the real meaning of dignity?' available at <https://www.psychologytoday.com/blog/dignity/201304/what-is-the-real-meaning-dignity-0> (accessed 9 October 2017).

<sup>3</sup> D Hicks (n 2 above).

<sup>4</sup> TE Hill 'Kantian perspectives on the rational basis of human dignity' in M Düwell, J Braarvig, R Bronsword & D Mieth (eds) (2014) *The Cambridge handbook of human dignity. Interdisciplinary perspectives* 216.

<sup>5</sup> Victor Emil Frankl (26 March 1905 to 2 September 1997) was an Austrian neurologist and a Holocaust survivor. He was the founder of logotherapy, which is a form of existential analysis available at [https://en.wikipedia.org/wiki/Viktor\\_Frankl](https://en.wikipedia.org/wiki/Viktor_Frankl) (accessed 16 March 2018).

<sup>6</sup> T Shantall 'The existential theory of Viktor Frankl' in W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 451.

<sup>7</sup> Shantall in Meyer *et al* (n 6 above) 451.

<sup>8</sup> As above.

<sup>9</sup> As above.

person, unassailable by mental disease.<sup>10</sup> Frankl also remarked that only the possibilities to communicate with the outside world are inhibited by mental disease, but that the centre of human beings remains indestructible. He noted 'And if this were not the case, it would be futile to be a psychiatrist'.<sup>11</sup>

## 2.2 Stigma

According to the South African Pocket Oxford Dictionary, 'stigma' is defined as 'mark or sign of disgrace or discredit'.<sup>12</sup> 'Stigmatize', by the same dictionary, is defined as 'describe as unworthy or disgraceful'.<sup>13</sup>

The concept of stigma is complex as it comprises of the self, the public and structural components.<sup>14</sup> The presence of stigma directly affects people with mental illness, as well as their support systems, provider networks, and their community resources.<sup>15</sup> It is important to understand stigma in order to reduce its negative impact in the context of persons undergoing mental treatment.<sup>16</sup>

Mental illness is often regarded as 'madness' or human weakness and its sufferers are stigmatised and ridiculed.<sup>17</sup> Mentally ill persons are marginalised, pushed out of homes and jobs, neglected, punished, isolated and abused.<sup>18</sup> From the sixteenth century onwards, monasteries and prisons gradually transferred the care of persons suffering from mental disorders to special institutions that were established in increasing numbers.<sup>19</sup> Although scientific scepticism started to gradually undermine the belief that mental disturbance was the 'devil's work', most of the early asylums were not much better than concentration camps as the residents lived and died in conditions of incredible filth and cruelty.<sup>20</sup>

The socially-constructed phenomenon of stigma lies at the core of defeating the mental well-being of persons, preventing persons with mental illness from obtaining

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<sup>10</sup> As above.

<sup>11</sup> As above.

<sup>12</sup> W Branford (1989) *The South African Pocket Oxford Dictionary* 758.

<sup>13</sup> Brandford (n 12 above) 758.

<sup>14</sup> PW Corrigan, BG Druss & DA Perlick 'The impact of mental health illness stigma on seeking and participating in mental healthcare' available at <https://www.ncbi.nlm.nih.gov/pubmed/26171956> (accessed 11 October 2017).

<sup>15</sup> Corrigan, Druss & Perlick (n 14 above).

<sup>16</sup> As above.

<sup>17</sup> W Pienaar 'Ethics in mental health care' in K Moodley (ed) (2011) *Medical Ethics, Law and Human Rights. A South African Perspective* 221.

<sup>18</sup> Pienaar in Moodley (n 17 above) 221.

<sup>19</sup> Coleman, Butcher & Carson (n 1 above) 44.

<sup>20</sup> As above.

the care and support they require.<sup>21</sup> This may range from gaining employment, accessing services and in many occasions, enjoying the right to live outside of an institution.<sup>22</sup> Poverty and gender discrimination exacerbate this problem.<sup>23</sup> If stigma in the community was to be eradicated, the mental health of a substantial number of people could be drastically improved.<sup>24</sup>

### 2.3 Mental illness/mental disorder

A mental illness/disorder refers to a wide range of conditions that affect mood, thinking and behaviour.<sup>25</sup> Its presence interrupts functioning in that an individual living with it is no longer able to cope with the normal stresses of life, love, play and work. They are unable to be productive and to make a contribution to the community.<sup>26</sup>

The *Diagnostic and Statistical Manual of Mental Disorders*<sup>27</sup> (DSM) is the standard classification of mental disorders used by mental health professionals for diagnostic purposes in South Africa and globally.<sup>28</sup> Each successive edition of the DSM has attempted to improve its clinical usefulness for professionals who diagnose and treat patients.<sup>29</sup> The DSM seeks to specify the exact behaviours which must be observed for a certain diagnosis to be made.<sup>30</sup> A specific number of signs or symptoms from a designated list must be present for a diagnosis to be properly assigned.<sup>31</sup>

Mental disorders can be life threatening.<sup>32</sup> The most fatal of the disorders with the highest mortality rates are eating disorders.<sup>33</sup> This is followed by schizophrenia, with

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<sup>21</sup> M Freeman 'Mental health and social change' in M Visser (ed) (2007) *Contextualizing community psychology in South Africa* 185.

<sup>22</sup> Freeman in Visser (n 21 above) 185.

<sup>23</sup> As above.

<sup>24</sup> As above.

<sup>25</sup> Staff Reporter (21 July 2017) 'Mental Health: a serious issue in South Africa. Health and wellness' available at <https://www.iol.co.za/lifestyle/health/mental-health-a-serious-issue-in-south-africa-10400056> (accessed 10 July 2018).

<sup>26</sup> Staff Reporter (n 25 above).

<sup>27</sup> SN Shapse 'The Diagnostic and Statistical Manual of Mental Disorders' 2008 The Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association is extensively used by psychiatrists, psychologists, social workers and most other mental health professionals to provide a common terminology for diagnostic purposes and for communicating about mental disorders. It provides a common language for illnesses of emotional and psychological origin. Its success and wide acceptance is reflected in its translation into over twenty languages including Japanese, French, Turkish, Greek and Arabic; available at <http://shapse.com/articles/dsm.pdf> (accessed 11 November 2018).

<sup>28</sup> Staff Reporter (n 25 above).

<sup>29</sup> As above.

<sup>30</sup> As above.

<sup>31</sup> As above.

<sup>32</sup> As above.

up to 50% of patients attempting suicide in the course of their illness.<sup>34</sup> All mental disorders are potentially fatal and any disorder that has suicide as its potential outcome can be considered a terminal illness.<sup>35</sup> A failure of the brain is indeed just the same as a failure of the heart or liver or lungs.<sup>36</sup>

In general, once a mental disorder emerges, the best route to follow is both medicinal intervention and counselling.<sup>37</sup> It requires consultation with a psychiatrist (a medically trained doctor who specialises in the treatment of mental disorders through psychotropic medicines or other means) and either a psychologist or other type of therapist who can help the person to obtain insight, to build skills and to make life and relationship changes to mitigate the effects of the illness.<sup>38</sup>

Some popular misconceptions about mental illness are that it is always bizarre; that there is a sharp dividing line between 'normal' and 'abnormal'; that mental patients are unstable and dangerous; that a mental disorder is something to be ashamed of; and that a mental disorder is something magical or awe-inspiring.<sup>39</sup>

At a psychological level there is no 'ideal' or even 'normal' model of human functioning to use as a base of comparison.<sup>40</sup> Hence there is considerable confusion and disagreement about what is or what is not normal, and this confusion is aggravated by society's changing values.<sup>41</sup> Any definition of 'abnormal' therefore is somewhat random.<sup>42</sup> One view holds that the concepts of 'normal' and 'abnormal' are meaningful only with reference to a given culture where 'abnormal' behaviour is behaviour which deviates from society's norms.<sup>43</sup>

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<sup>33</sup> As above.

<sup>34</sup> As above.

<sup>35</sup> As above.

<sup>36</sup> As above.

<sup>37</sup> As above.

<sup>38</sup> As above.

<sup>39</sup> Coleman, Butcher & Carson (n 1 above) 10 - 13.

<sup>40</sup> As above 15.

<sup>41</sup> As above.

<sup>42</sup> As above.

<sup>43</sup> As above.

## 2.4 Humane and ethical treatment of mental healthcare users

The movement towards the humane treatment of patients with mental illness received its first great thrust from the work of Philippe Pinel (1745-1826)<sup>44</sup> in France.<sup>45</sup>

Humanistic theories<sup>46</sup> and the person-oriented approach<sup>47</sup> in psychology present humans as beings with worth and dignity who actively and consciously strive towards the actualisation of their potential.<sup>48</sup> Every psychologist<sup>49</sup> is ethically committed to help people succeed in their efforts to live happy, fulfilling and purposeful lives, but the psychologist faces certain obstacles, particularly those preconceptions that impede progress in the understanding of mental illness<sup>50</sup>, its prevention and proper treatment.<sup>51</sup>

Ethics are rules provided by an external source, for example codes of conduct in the workplaces or principles in religions.<sup>52</sup> The increasing social awareness of today's mental health professionals has brought into focus the ethical questions pertaining to their role as therapists and value models, and also their role as agents for maintaining the status quo of or fostering social change.<sup>53</sup> Therapy takes place in a context that involves the values of the therapist, the person who receives treatment and the society they live in.<sup>54</sup> It is often up to the therapists to decide what path to take, and this in itself requires value decisions on their part about what is best for the individual receiving mental healthcare, as well as what is best for the larger society.<sup>55</sup> The mental health professional is therefore challenged to develop ethical standards

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<sup>44</sup> Philippe Pinel (born April 20, 1745, Saint-André, Tarn, France. Died Oct. 25, 1826, Paris), French physician who pioneered in the humane treatment of the mentally ill available at <https://www.google.co.za/search?q=philippe+pinel+biography&oq=Philippe+Pinel&aqs=chrome.3.0l6.4184j0j9&sourceid=chrome&ie=UTF-8> (accessed 13 April 2018).

<sup>45</sup> Coleman, Butcher & Carson (n 1 above) 10 – 13.

<sup>46</sup> A Carr (2011) 343. *Positive psychology. The science of happiness and human strengths*. The humanistic psychology movement placed an emphasis on the positive rather than negative aspects of the human condition.

<sup>47</sup> A Carr (n 46 above) 343. Carl Rogers developed a person-centered approach to psychotherapy. He proposed that if therapists provided patients with a positive therapeutic alliance whilst in non-directive therapeutic dialogue, it would create a context where in their innate motivation towards self-actualisation would find expression and where in the problems they present with, would resolve.

<sup>48</sup> W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 324.

<sup>49</sup> In the context of this dissertation it also includes every psychiatrist, therapist, counselor, and mental healthcare worker.

<sup>50</sup> Or mental disorder.

<sup>51</sup> Coleman, Butcher & Carson (n 1 above) 28.

<sup>52</sup> A Perez (4 August 2017) 'Ethics vs morals vs law' available at <https://www.linkedin.com/pulse/ethics-vs-morals-law-dr-arturo-perez> (accessed 23 July 2018).

<sup>53</sup> Coleman, Butcher & Carson (n 1 above) 670.

<sup>54</sup> As above.

<sup>55</sup> As above.

and societal safeguards to prevent misuse of the techniques they apply for modifying individual and group behaviour.<sup>56</sup>

According to Beauchamp and Childress<sup>57</sup>, the principles of medical ethics are *autonomy* – the right for an individual to make his or her own choice; *beneficence* – the principle of acting with the best interest of the other in mind; *non-maleficence* – the principle of ‘above all, do no harm’, as stated in the Hippocratic Oath, and *justice* – a concept that emphasises fairness and equality among individuals.<sup>58</sup> The values inherent in these principles resonate with society’s moral norms, and their practical use in ethical decision making is evident.<sup>59</sup> These principles are, however, often in conflict with one another, but all healthcare workers and researchers need to factor each into their reflections on what to do in a specific situation.<sup>60</sup>

The starting point for Beauchamp and Childress is recognising the basic freedom of autonomy of the patient.<sup>61</sup> In a healthcare setting, where patients are often vulnerable and surrounded by experts, it is easy for a patient’s autonomous decision to be disrespected.<sup>62</sup> Beauchamp and Childress were writing at a time when the expertise of medical professionals meant they often took extreme measures in performing what they decided was in the best interest of their patients, and in the process they adopted a paternalistic approach, treating their patients like uninformed children rather than autonomous, capable adults.<sup>63</sup> Autonomy requires ‘respectful treatment in disclosing information’ so that people can make their own decisions, and empowering their decision making so that they are as free as possible to make the decision in the circumstances.<sup>64</sup>

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<sup>56</sup> As above.

<sup>57</sup> The Ethics Centre ‘Big thinkers: Thomas Beauchamp & James Childress on Medical Ethics’ Thomas L Beauchamp (1939-present) and James F Childress (1940-present) are American philosophers who are best-known for their work in medical ethics. Their book *Principles of Biomedical Ethics* was first published in 1985, where it had become a must-read for medical students, researchers and academics available at [http://www.ethics.org.au/on-ethics/blog/august-2017/thomas-beauchamp-james-childress-medical-ethics\\_](http://www.ethics.org.au/on-ethics/blog/august-2017/thomas-beauchamp-james-childress-medical-ethics_) (accessed 17 August 2018).

<sup>58</sup> A Aldcroft (13 July 2012) ‘Measuring the four principles of Beauchamp and Childress’ available at <http://blogs.biomedcentral.com/bmcseriesblog/2012/07/13/measuring-the-four-principles-of-beauchamp-and-childress/> (accessed 12 August 2018).

<sup>59</sup> Aldcroft (n 58 above).

<sup>60</sup> The Ethics Centre (n 57 above).

<sup>61</sup> As above.

<sup>62</sup> As above.

<sup>63</sup> As above.

<sup>64</sup> As above.

Medical ethics had its origin in the Hippocratic Oath, which, although it includes a vast number of different ideas, is often condensed to 'first do no harm'.<sup>65</sup> This principle, to which Beauchamp and Childress refer as non-maleficence, seems sensible on one level and almost impossible to perform in practice on another.<sup>66</sup> Beauchamp and Childress provide a helpful nuance in the principle 'first do no harm' where it means avoiding anything that is unnecessarily or unjustifiably harmful.<sup>67</sup> The relevant question to ask is whether the level of harm is proportionate to the good it might achieve and whether there are other procedures that might give the same result without causing as much harm.<sup>68</sup>

The principle of beneficence refers to acts of kindness, charity and altruism.<sup>69</sup> In a medical context, this means ensuring that the medical practitioner treats their patients well and that they do more than the bare minimum.<sup>70</sup> On an individual level, beneficence in healthcare will require medical practitioners to be compassionate, empathetic and sensitive in their 'bedside manner'.<sup>71</sup> On a larger scale, beneficence can determine how a national health system approaches a problem like, for example, organ donation.<sup>72</sup>

The principle of beneficence can clash with the principle of autonomy.<sup>73</sup> If a patient has not consented to a procedure that could be in their best interest, it leaves their medical practitioner with the question of how they should act in a certain situation.<sup>74</sup>

In applying the principle of justice, which in the context of medical healthcare points to the fair distribution of health resources, one recognises that healthcare often operates with limited resources, and as much as medical practitioners would want to treat everyone, there are not always enough beds, medical personnel or medications available.<sup>75</sup> Justice is the principle that assists medical practitioners in determining who gets priority in these cases.<sup>76</sup> The manner in which resources are distributed will

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<sup>65</sup> As above.

<sup>66</sup> As above.

<sup>67</sup> As above.

<sup>68</sup> As above.

<sup>69</sup> As above.

<sup>70</sup> As above.

<sup>71</sup> As above.

<sup>72</sup> As above.

<sup>73</sup> As above.

<sup>74</sup> As above.

<sup>75</sup> As above.

<sup>76</sup> As above.

depend on the theory of justice a society subscribes to.<sup>77</sup> A consequentialist<sup>78</sup> approach to justice will distribute resources in the way that generates the best outcomes or most happiness, which may mean leaving an elderly patient with no dependants to die in order to save a parent with young children.<sup>79</sup> By contrast, Beauchamp and Childress subscribe to the theory of John Rawls<sup>80</sup> who proposes that access to health resources should be allocated according to principles every person could agree to.<sup>81</sup> This might suggest the allocation of resources on the basis of who needs treatment the most, which is the way paramedics and emergency workers think when performing triage.<sup>82</sup> Beauchamp and Childress's treatment of justice highlights one of the major criticisms of their work in that it is not exact enough to guide people in deciding what to do.<sup>83</sup> If a person wants to determine how to distribute resources, being presented with a choice of theories may not be the best solution; being provided with a framework for answering the question may be more suitable.<sup>84</sup> It is, however, acknowledged that in life or death decisions, there may not be clear-cut answers.<sup>85</sup>

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<sup>77</sup> As above.

<sup>78</sup> Ethics Unwrapped 'Consequentialism' Consequentialism is an ethical theory that judges whether or not something is right by what its consequences are. For instance, most people would agree that lying is wrong. But if telling a lie would help save a person's life, consequentialism says it's the right thing to do. Two examples of consequentialism are utilitarianism and hedonism. Utilitarianism judges consequences by a "greatest good for the greatest number" standard. Hedonism says something is 'good' if the consequence produces pleasure or avoids pain. Consequentialism is sometimes criticised because it can be difficult, or even impossible, to know what the result of an action will be ahead of time. Also, in certain situations, consequentialism can lead to decisions that are objectionable, even though the consequences are arguably good.  
<https://ethicsunwrapped.utexas.edu/glossary/consequentialism> (accessed 18 August 2018).

<sup>79</sup> The Ethics Centre (n 57 above).

<sup>80</sup> *A Theory of Justice* is a work of political philosophy and ethics by John Rawls, in which he attempts to solve the problem of distributive justice (the socially just distribution of goods in a society) by utilising a variant of the familiar device of the social contract. The theory is known as "Justice as Fairness" from which Rawls derives his two principles of justice. Together, they dictate that society should be structured in a way that the greatest possible amount of liberty is given to its members, limited only by the notion that the liberty of any one member shall not infringe upon that of any other member. Secondly, inequalities, either social or economic, are only to be allowed if the worst off will be better off than they might have been under an equal distribution. Finally, if there is such a beneficial inequality, this inequality should not make it harder for those without resources to occupy positions of power, for instance, public office; available at [https://en.wikipedia.org/wiki/A\\_Theory\\_of\\_Justice](https://en.wikipedia.org/wiki/A_Theory_of_Justice) (accessed 18 August 2018).

<sup>81</sup> The Ethics Centre (n 57 above).

<sup>82</sup> As above.

<sup>83</sup> As above.

<sup>84</sup> As above.

<sup>85</sup> As above.

## 2.5 Morality

Morals are individual or group beliefs about what is right and what is wrong.<sup>86</sup> There is a strong connection between morality and religion since many standards of right and wrong are dictated or inspired by religion.<sup>87</sup> Morals are concerned with the 'goodness' or 'badness' of human character.<sup>88</sup> Morality governs private, personal interactions and demands a person to act from a sense of ethical duty.<sup>89</sup>

Beauchamp and Childress established basic ethical principles for healthcare.<sup>90</sup> They describe their project as identifying 'a common morality' – 'shared by all persons committed to morality', applicable to everyone at all times and all places.<sup>91</sup> Beauchamp and Childress's four principles (see section 2.2.4), respect for autonomy, beneficence, non-maleficence and justice, are the cornerstone of this common morality.<sup>92</sup>

Ebbesen, *et al* state that the notion of common morality plays a prominent role in some of the most influential theories of biomedical ethics.<sup>93</sup> They indicate that according to Beauchamp, the rules of common morality are a product of human conduct, experience, and history, which means that they are learned in society.<sup>94</sup> Ebbesen, *et al* note that Beauchamp believes that human nature is similar enough that we will make similar judgments when we experience limited resources, need to cooperate, and so on.<sup>95</sup> The objectives of the common morality are to promote *human* flourishing by frustrating circumstances that cause the quality of people's lives to get worse.<sup>96</sup> Ebbesen, *et al* further points to Beauchamp who writes that the 'object of morality is to prevent or limit problems of indifference, conflict, hostility, scarce resources, limited information, and the like'.<sup>97</sup>

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<sup>86</sup> T Humby, L Kotzé & A Du Plessis (eds) (2016) *Introduction to law and legal skills in South Africa* 5.

<sup>87</sup> Humby *et al* (n 86 above) 5.

<sup>88</sup> Perez (n 52 above).

<sup>89</sup> As above.

<sup>90</sup> The Ethics Centre (n 57 above).

<sup>91</sup> As above.

<sup>92</sup> As above.

<sup>93</sup> M Ebbesen, S Andersen & BD Pedersen (25 January 2012) *Journal of Clinical Research & Bioethics* 'Further development of Beauchamp and Childress theory based on empirical ethics' available at <https://www.omicsonline.org/further-development-of-beauchamp-and-childress-theory-based-on-empirical-ethics-2155-9627.S6-e001.php?aid=7727> (accessed 18 August 2018).

<sup>94</sup> Ebbesen, Andersen & Pedersen (n 93 above).

<sup>95</sup> As above.

<sup>96</sup> As above.

<sup>97</sup> As above.

## 2.6 Religion

Religions are shared collections of transcendental beliefs that have been passed on from believers to converts, held to be actively meaningful and serious.<sup>98</sup> Religion is based on formally documented doctrine, also known as organised religion, or on established cultural practices, also known as folk religion. In both forms, there are religious professionals who embody formal aspects of the religion and who act in positions of leadership and governance.<sup>99</sup> The religious beliefs generate practical implications for how life should be lived.<sup>100</sup> Religious beliefs often include spiritual explanations of humans' place in the world, attempts to answer questions about 'why are we here', worship of deities and/or supernatural entities, including ancestors, conceptions of 'holy' and 'sacred' activities, set rituals, and codes of morality and action that hold a mandate from a supernaturally great being, from a supernatural force or from the will of the Universe itself.<sup>101</sup>

## 2.7 Values

It is critical for humans to make wise value judgments in choosing from alternatives.<sup>102</sup> Where a person lacks values, or puts their faith in false values, the results are bound to be destructive and maladaptive.<sup>103</sup> It is difficult to attempt a formulation of universal values but it would appear that we are likely to come to grips with certain tentative value assumptions as minimal essentials, *inter alia*:<sup>104</sup>

A belief in the worth of the individual and of human survival.

A belief that personal growth and social progress are possible and worthwhile.

A belief in equal justice and in the desirability of opportunities for all persons to fulfil their potentialities.

A belief in the value of the 'truth' that we try to approach by means of scientific inquiry.

A belief in the maxim 'love one another' and other basic ethical tenets of the world's religious philosophies.

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<sup>98</sup> V Crabtree 'What is religion? How do you define religion? (From the Human Truth Foundation)' available at [http://www.humanreligions.info/what\\_is\\_religion.html](http://www.humanreligions.info/what_is_religion.html) (accessed 18 July 2018).

<sup>99</sup> Crabtree (n 98 above).

<sup>100</sup> As above.

<sup>101</sup> As above.

<sup>102</sup> Coleman, Butcher & Carson (n 1 above) 698.

<sup>103</sup> As above.

<sup>104</sup> As above.

A belief in the right and responsibility of all people to have a voice in decisions that will affect their lives.

A belief in humankind as a functional part of the universe with potentialities for evolution that can be fulfilled.

A belief in the responsibility of all individuals for carrying forward the progress made by preceding generations and for contributing to the creation of a good future for all.<sup>105</sup>

## **2.8 Mental healthcare**

Over the years, mental healthcare<sup>106</sup> has been mostly restorative, in that persons were only helped after they have already presented with serious problems.<sup>107</sup> Before the 1960s, mental healthcare professionals did not become involved until after a person has had a breakdown.<sup>108</sup> Then such persons were often sent for treatment far away from their homes, which often compounded their distress and disrupted their lives.<sup>109</sup> Today, professionals increasingly attempt to identify problems before they become severe, or they try to create a set of conditions wherein a breakdown will not occur.<sup>110</sup> However, efforts towards prevention in the mental healthcare sphere are still based largely on hypotheses about what will be successful.<sup>111</sup> However, most professionals in the field believe that there must be a greater effort in training in preventive roles and in developing more effective research strategies for reducing mental disorder.<sup>112</sup>

When preventive strategies are unsuccessful and a serious mental health problem develops, modern professionals place greater emphasis on prompt treatment.<sup>113</sup> They advise treatment in the person's own community, where possible, in order for the available family and other familial supports to be utilised and to limit disruption to the person's life.<sup>114</sup> If hospitalisation is required, every effort is taken to prevent the

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<sup>105</sup> As above.

<sup>106</sup> In the context of this dissertation 'psychological' healthcare also pertains to mental healthcare and mental healthcare.

<sup>107</sup> Coleman, Butcher & Carson (n 1 above) 673.

<sup>108</sup> As above.

<sup>109</sup> As above.

<sup>110</sup> As above.

<sup>111</sup> As above.

<sup>112</sup> As above.

<sup>113</sup> As above.

<sup>114</sup> As above.

disorder from becoming chronic and to return the person to their community as soon as possible, with the necessary aftercare and continued support.<sup>115</sup>

The mental hospital as a therapeutic community places as few restraints as possible on the freedom of the person, encouraging them to take responsibility for their behaviour and to participate actively in treatment programmes.<sup>116</sup> Hospital personnel are expected to treat the person as a human being deserving of consideration and courtesy.<sup>117</sup> Interaction between persons in mental healthcare is designed to be of therapeutic benefit.<sup>118</sup>

A risk of hospitalising a person is that it may become their permanent refuge from the world. There they may escape completely from the demands of everyday life or they may be encouraged to settle into a chronic 'sick role' with a permanent excuse to let other people take care of them.<sup>119</sup> To keep the focus on returning the person to the community and to prevent the disorder from becoming chronic, hospital staff attempt to establish close ties with the family and community to maintain a 'recovery-expectant' attitude.<sup>120</sup> Increasingly, therapy refers not only to helping individuals to adjust to their personal situations, no matter how frustrating or abnormal, it also focuses on alleviating group and societal conditions that may be causing or maintaining the maladaptive behaviour.<sup>121</sup>

## **2.9 Law**

People need rules to regulate their interaction with each other and with things, to maintain order in a society, and to determine what is acceptable and permissible, and what is not.<sup>122</sup> These rules are known as 'laws' as law provides rules to guide human behaviour in society. Law holds people accountable for harm they inflicted.<sup>123</sup> Law as a concept is also notoriously difficult to define.<sup>124</sup> It is usually defined as the body of rules governing human conduct, recognised as binding by people and enforced by public authorities.<sup>125</sup> Law is prescriptive rather than descriptive in that it

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<sup>115</sup> As above.

<sup>116</sup> As above 679.

<sup>117</sup> As above.

<sup>118</sup> As above 673.

<sup>119</sup> As above 679.

<sup>120</sup> As above.

<sup>121</sup> As above 16.

<sup>122</sup> Humby *et al* (n 86 above) 1.

<sup>123</sup> As above.

<sup>124</sup> As above.

<sup>125</sup> As above.

prescribes how human beings in an ordered society ought to behave and what should happen if they depart from prescribed legal norms.<sup>126</sup> A lawless society would be marked by arbitrariness, inequality, uncertainty, unfairness, unreasonableness and self-help.<sup>127</sup> It would further be a conflict-ridden society in which those most physically, financially and otherwise powerful would rule.<sup>128</sup> Law maintains order and justice in the community by specifying the nature and extent of rights, duties, powers, and immunities arising in human relationships.<sup>129</sup> It furthermore establishes the judicial system as the authoritative system through which disputes are settled.<sup>130</sup> Law provides the mechanisms for society to function through tools such as written laws, and policing.<sup>131</sup> There is a connection between law and morality since law, too, is concerned with upholding standards in the same way as morality. There is a connection between law and religion as law is often influenced by religious rules, practices and beliefs.<sup>132</sup> For laws to have authority, they must be formulated by the people and institutions designated by society for this purpose.<sup>133</sup> Legal rules must be expressed in some linguistic way;<sup>134</sup> they must be collected in some form, stored, updated and made available for the benefit of all in society.<sup>135</sup> The rules developed by designated institutions have a certain measure of power and command, resulting in people willing to comply with them. For rules to have legitimacy, the rule that only certain institutions have the power to make and extend laws must be mandated by the majority of society who will be bound by that law.<sup>136</sup>

## **2.10 The Constitution, 1996**

The Constitution, 1996 ('the Constitution') is the supreme law in South Africa.<sup>137</sup> <sup>138</sup> It serves as the standard against which all law, together with conduct arising from such law, is evaluated.<sup>139</sup> It entrenches constitutional values and fundamental rights, and the structure, operation and powers of government are based in it.<sup>140</sup> The three

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<sup>126</sup> As above 2.

<sup>127</sup> As above 3.

<sup>128</sup> As above.

<sup>129</sup> As above 4.

<sup>130</sup> As above.

<sup>131</sup> As above.

<sup>132</sup> As above 5.

<sup>133</sup> As above 123.

<sup>134</sup> As above.

<sup>135</sup> As above.

<sup>136</sup> As above.

<sup>137</sup> The Constitution of the Republic of South Africa, 1996.

<sup>138</sup> Humby *et al* (n 86 above) 125.

<sup>139</sup> As above.

<sup>140</sup> As above.

spheres of government (national, provincial and local), and the different states of power (legislative, judicial and executive), are provided for in the Constitution.<sup>141</sup> It also provides for a range of government institutions supporting a constitutional democracy, such as, among others, the Public Protector South Africa<sup>142</sup> and the South African Human Rights Commission.<sup>143 144</sup>

### **3. Summary**

Definitions and descriptions of certain concepts as a means of clarification for the chapters to follow have been provided. The concepts of dignity, stigma, mental disorder or mental illness, humane and ethical treatment, values, mental healthcare, law, and the Constitution have been introduced.

Chapter 3, below, contains a literature review of the psychological aspect of dignity and the reduction of stigma in the context of persons living with mental health issues. The importance of preserving dignity when dealing with persons living with mental health issues is also outlined.

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<sup>141</sup> As above.

<sup>142</sup> As above 277 The Public Protector is one of the state institutions which support constitutional democracy which is provided for by the Constitution and is appointed by the president. The Public Protector has powers to investigate impropriety and prejudice in state affairs or in the public administration, to report on these and to take remedial action in the form of recommendations.

<sup>143</sup> As above 278 The South African Human Rights Commission (SAHRS) is created under the Constitution (S 184) and is regulated by the Human Rights Commission Act 54 of 1994. The Commission has powers to investigate and report on instances of the violation of human rights in South Africa.

<sup>144</sup> As above 125.

### Chapter 3

## Psychological perspectives on human dignity

*'who knows if the moon's  
a balloon, coming out of a keen city  
in the sky - filled with pretty people?  
(and if you and i should*

*get into it, if they  
should take me and take you into their balloon,  
why then  
we'd go up higher with all the pretty people*

*than houses and steeples and clouds:  
go sailing  
away and away sailing into a keen  
city which nobody's ever visited, where*

*always  
it's  
Spring) and everyone's  
in love and flowers pick themselves'*

(E.E. Cummings)<sup>1</sup>

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<sup>1</sup> EE Cummings 1894 - 1962) was a popular American poet of the early 20th century available at <https://www.who2.com/bio/ee-cummings/> (accessed 28 August 2018).

## 1. Introduction

This chapter presents a literature review of the psychological aspect of dignity and the reduction of stigma in persons struggling with mental health issues.

Psychology and law have been closely entwined since the dawn of recorded history as both are concerned with human behaviour.<sup>2</sup> Psychology and law are so intertwined that some lawyers perceive the legal profession as a branch of applied psychology, while admitting that lawyers make rather poor applied psychologists.<sup>3</sup> It was not until psychology became recognised as a distinct academic discipline and a profession that its forensic applications could be identified and separated from those of forensic medicine and forensic science.<sup>4</sup>

Psychiatrists have moved away from the physical basis of medicine and have embraced the more liberal 'moral' approach which lead to the practice of psychoanalysis and its many variants.<sup>5</sup> Psychologists forsake their philosophical roots in favour of the experimental approach as developed in applied science.<sup>6</sup>

In spite of the universal appeal of dignity, it is a topic that is rarely discussed.<sup>7</sup> People may not have words to describe it, but all have an internal experience of it.<sup>8</sup> People know what it feels like to be treated as inferior, discriminated against, ignored, misunderstood, criticised and excluded.<sup>9</sup> The shame that accompanies being treated poorly, in subtle and not-so-subtle ways, prevents people from doing what is needed to recover from violations of their dignity, which is bringing it out into the open, validate them, and give it the attention it deserves.<sup>10</sup>

The purpose of this chapter is to outline the importance of preserving dignity when dealing with persons living with mental health issues. The focus is on matters of dignity and on providing a language for bringing these issues to the surface; the

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<sup>2</sup> GH Gudjonsson & LRC Haward (1998) *Forensic psychology. A guide to practice* available at <https://www.amazon.com/Forensic-Psychology-Practice-G-H-Gudjonsson/dp/0415132916> (accessed 10 November 2018).

<sup>3</sup> Gudjonsson & Haward (n 2 above).

<sup>4</sup> As above.

<sup>5</sup> As above.

<sup>6</sup> As above.

<sup>7</sup> D Hicks 7 (Aug 2011) 'Why dignity matters' - 'The important role dignity plays in our lives and relationships' available at <https://www.psychologytoday.com/us/blog/dignity/201108/why-dignity-matters> (accessed 10 November 2018).

<sup>8</sup> Hicks (n 7 above).

<sup>9</sup> As above.

<sup>10</sup> As above.

suffering that accompanies these painful human experiences must be legitimised and acted on.<sup>11</sup>

## 2. Literature review of psychological content

### 2.1 Mental health

There is no standardised international definition of mental health and there are numerous different concepts to define and explain it.<sup>12</sup> According to the World Health Organisation the concepts regularly used to explain the notion of mental health include social well-being, perceived self-efficacy, autonomy, competence, intergenerational dependence, and self-actualisation of one's intellectual and emotional potential.<sup>13</sup>

The Ministry of National Health and Welfare of Canada (1987) provides a more comprehensive definition of mental health where they take into account the context people live in.<sup>14</sup> The Ministry states that

... mental health is the capacity of the individual, the group, and the environment to interact with one another in ways that promote subjective well-being, the optimal development and use of mental abilities (cognitive, affective and relational), the achievement of individual and collective goals consistent with justice and the attainment and preservation of conditions of fundamental equality.<sup>15</sup>

In terms of overall mental health, positive psychology shares a strong connection with clinical psychology.<sup>16</sup> Positive psychology is a branch of psychology where positive emotions, traits, and institutions are scientifically studied with a view to generating knowledge to facilitate living pleasant, engaged and meaningful lives.<sup>17</sup> Positive therapy programs include interventions such as encouraging the use of signature strengths such as gratitude and forgiveness to foster an engaged life, and interventions to enhance relationships within families and institutions to promote a meaningful life.<sup>18</sup> In clinical practice in positive psychology the programmes are used

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<sup>11</sup> As above.

<sup>12</sup> M Freeman 'Mental health and social change' in M Visser (ed) (2007) *Contextualizing community psychology in South Africa* 178, 179.

<sup>13</sup> Freeman in Visser (n 12 above) 178, 179.

<sup>14</sup> As above.

<sup>15</sup> As above.

<sup>16</sup> Positive Psychology Program (25 November 2014) 'The connections between positive psychology and mental health' available at <https://positivepsychologyprogram.com/positive-psychology-and-mental-health/> (accessed 16 September 2018).

<sup>17</sup> A Carr (2011) *Positive psychology. The science of happiness and human strengths* 40.

<sup>18</sup> Carr (n 17 above) 40.

in a flexible manner and are tailored to meet the specific concerns of the person attending therapy.<sup>19</sup> Some forms of positive psychological therapy include Frisch's quality-of-life therapy,<sup>20</sup> person-centred approaches,<sup>21</sup> post-traumatic growth-based therapy,<sup>22</sup> solution-focused therapy,<sup>23</sup> positive family therapy<sup>24</sup> and strengths-based therapies for severe problems.<sup>25</sup> <sup>26</sup> Clinical psychology is a branch in psychology associated with a person's mental health status, psychological trauma, and overall mental well-being.<sup>27</sup> Clinical psychology also aims to increase people's positive traits to help them deal with mental disorders.<sup>28</sup> The end goal remains to help people function in everyday life and to lead a normal life.<sup>29</sup>

Emotional well-being includes happiness, interest in life, and satisfaction. <sup>30</sup> Psychological well-being includes liking most parts of one's own personality, being good at managing the responsibilities of daily life, having good relationships with others, and being satisfied with one's own life.<sup>31</sup> Social well-being refers to positive functioning and involves having something to contribute to society, feeling part of a community, believing that society is becoming a better place for all people (social actualisation), and that the way society works makes sense to the person.<sup>32</sup>

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<sup>19</sup> As above.

<sup>20</sup> As above 364. An integration of cognitive therapy practices with ideas from positive psychology which aims to enhance quality of life in areas as identified with the Quality of Life Inventory.

<sup>21</sup> As above 343. Carl Rogers developed a person-centered approach to psychotherapy. He proposed that if therapists provide patients with a positive therapeutic alliance whilst in non-directive therapeutic dialogue, it would create a context where their innate motivation towards self-actualisation would find expression and the problems they present with, would resolve.

<sup>22</sup> As above 344. This approach rests on the assumptions that post-traumatic growth arises from the active cognitive and affective processing persons must engage with after their assumptive world has been shattered by traumatic experiences.

<sup>23</sup> As above 365. An approach developed within family therapy at its aim to identify infrequent exceptional episodes in which the person's problems were expected to occur but did not, and to arrange for persons to increase the frequency of these episodes.

<sup>24</sup> As above 346. This approach combines ideas and practices from family therapy and positive psychology where it views the family rather than the individual as the primary unit of treatment.

<sup>25</sup> As above 48. The voyages to well-being program for persons who have recovered from psychological problems; the strengths model helping people to recover from chronic severe psychiatric conditions, and the good lives model for treating sex offenders, are all strength-based therapy approaches which are consistent with the overall aims of positive psychology.

<sup>26</sup> As above 341- 348.

<sup>27</sup> Positive Psychology Program (n 16 above).

<sup>28</sup> S Galderisi, A Heinz, M Kastrup, J Beezhold & N Sartorius (4 June 2015) World psychiatry 'Toward a new definition of mental health' available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471980/> (accessed 20 September 2018).

<sup>29</sup> Galderisi *et al* (n 28 above).

<sup>30</sup> As above.

<sup>31</sup> As above.

<sup>32</sup> As above.

The concept of mental health takes into consideration the domains of self-realisation, a sense of mastery over the environment, and a sense of autonomy, in the form of the ability to identify, confront, and solve problems.<sup>33</sup>

A proposed definition of mental health that leaves room for many facets of emotional states and for 'imperfect functioning' is as follows:

Mental health is a dynamic state of internal equilibrium which enables individuals to use their abilities in harmony with universal values<sup>34</sup> of society. Basic cognitive and social skills; ability to recognize, express and modulate one's emotions, as well as empathize with others; flexibility and ability to cope with adverse life events and function in social roles; and harmonious relationship between body and mind represent important components of mental health which contribute, to varying degrees, to the state of internal equilibrium.<sup>35</sup>

## **2.2 The prevalence of mental disorders**

Mental health problems occur in the rich and poor, the young and the old, in urban and rural areas and in males and females.<sup>36</sup> Worldwide, approximately 450 million people suffer from diagnosable neuropsychiatric conditions, while many more endure misery and psychological difficulties.<sup>37</sup> Studies conducted in developed and developing countries show that more than 25% of people present with one or more mental or behavioural disorder during their lifetime, with the most common diagnoses being depression, anxiety and substance abuse.<sup>38</sup> South Africa shows prevalence rates of between 10% and 40% of mental or behavioural disorders.<sup>39</sup>

The distribution of mental health problems is not spread evenly across groups.<sup>40</sup> Forces other than direct biological and psychological ones affect mental health.<sup>41</sup> Relationships between social, political and economic factors and physical health are well established.<sup>42</sup> It is understandable that social forces or realities such as poverty, gender, oppression, stigma, HIV/AIDS, violence, rapid urbanisation, war and torture

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<sup>33</sup> As above.

<sup>34</sup> As above 'Universal values' entail respect and care for oneself and other living beings; recognizing the connectedness between people; respect for the environment, and respect for one's own and others' freedom.

<sup>35</sup> As above.

<sup>36</sup> Freeman in Visser (n 12 above) 178, 179.

<sup>37</sup> As above.

<sup>38</sup> As above.

<sup>39</sup> As above.

<sup>40</sup> As above.

<sup>41</sup> As above.

<sup>42</sup> As above.

impact negatively on physical and mental health.<sup>43</sup> Adverse social and economic conditions are certainly critical risk factors for mental disorders to develop and have significant implications for social change and social policy.<sup>44</sup> This issue is complicated by the fact that not all who endure adverse social conditions are psychologically unable to cope.<sup>45</sup> A stimulus which is perceived as 'dangerous' or 'threatening' by one person may be viewed as 'challenging' or 'thrilling' by another.<sup>46</sup> The 'environment' and the 'situation' are perceived, coded and categorised by each person, and these 'cognitive operations' influence the impact that these environments or situations have on them.<sup>47</sup> What is a source of delight for one person may repel his neighbour.<sup>48</sup> A person can actively select the situation to which they expose themselves to, and in a sense create their own environment, entering selected settings and making active choices, rather than responding automatically.<sup>49</sup> There is thus no causal link between specific adverse social conditions and mental health, but there are very strong and extremely important relational links, which deserves reflection.<sup>50</sup>

It is not only the conditions acting on an individual's psyche that determine their mental status but also other forces such as the available community support and professional care.<sup>51</sup> Psychotherapeutic counselling is *inter alia* concerned with social values and environmental issues.<sup>52</sup> A growing number of counsellors perceive being an agent of community change as a key value of counselling where clients<sup>53</sup> are encouraged to better their circumstances and to fight injustice.<sup>54</sup>

As physical illnesses as such are regarded as being more serious, with higher mortality rates than mental illnesses, they get preference in terms of resources and spending.<sup>55</sup> However, there is a growing realisation that mental disorders take an

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<sup>43</sup> As above.

<sup>44</sup> As above.

<sup>45</sup> As above.

<sup>46</sup> W Mischel (1976) *Introduction to Personality* 501.

<sup>47</sup> Mischel (n 46 above) 501.

<sup>48</sup> As above 504.

<sup>49</sup> As above 505.

<sup>50</sup> Freeman in Visser (n 12 above) 179.

<sup>51</sup> As above.

<sup>52</sup> LM Brammer and EL Shostrom (1982) *Therapeutic psychology. Fundamentals of counseling and psychotherapy* 18.

<sup>53</sup> Or patients or mental healthcare users.

<sup>54</sup> Brammer & Shostrom (n 52 above) 18.

<sup>55</sup> Staff Reporter (21 July 2017) 'Mental health: a serious issue in South Africa. Health and wellness' available at <https://www.iol.co.za/lifestyle/health/mental-health-a-serious-issue-in-south-africa-10400056> (accessed 10 July 2018).

enormous toll on society and a shift, albeit slowly, is taking place towards investment in resources for the treatment of them.<sup>56</sup>

The Life Esidimeni<sup>57</sup> incident and the death of over 100 mentally ill persons serves as an example of the lack of thought and care that in some cases go into the placement of the mentally disordered, with disastrous consequences.<sup>58</sup> The Life Esidimeni tragedy confirmed that, to this day, many mental healthcare users in South Africa must rely on state facilities with sub-standard care due to limited resources.<sup>59</sup>

In the private psychiatric healthcare sector the costs associated with mental healthcare increases annually as a result of increases in both the burden of disease and access to care, with increasing levels of utilisation.<sup>60</sup> The issue of quality arises with the dilemma of healthcare systems looking for the highest quality of care at the lowest cost.<sup>61</sup> Within psychiatry, it is not yet comprehensively defined what outcomes determine quality, compared to more exact disciplines where quality and outcomes are immediately measurable, and no system in the discipline of psychiatry has yet defined what costs should be incurred in the achievement of those desired outcomes.<sup>62</sup>

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<sup>56</sup>Staff Reporter (n 55 above).

<sup>57</sup> 'The Life Healthcare Esidimeni scandal'. This scandal involved the deaths of 143 people at psychiatric facilities in the Gauteng province of South Africa from causes including starvation and neglect. Life Esidimeni is a private healthcare provider from which patients were removed by the state. The incident has been called 'the greatest cause of human rights violation' in democratic South Africa. In October 2015, the Gauteng Department of Health terminated an outsourced care contract with Life Esidimeni in order to save money and give effect to a policy to 'deinstitutionalise' psychiatric patients. Some 1 300 patients were transferred to the care of their families, non-governmental organisations and other hospitals. The process was subsequently found to have been a total shamble. Many attempts were made to warn the health department of the consequences of transferring patients to non-governmental organisations who are incapable of providing the specialised care they required. These warnings were ignored, and in one instance the department was found to have misled a Court in order to prevent it from being interdicted. According to death certificates patients died of causes including hypothermia and dehydration, although many certificates listed natural causes. Family members of deceased patients reported seeing patients walking around naked, that one NGO gave the same standard set of medication to every patient, and that bodies were badly decomposed; available at [https://en.wikipedia.org/wiki/Life\\_Healthcare\\_Esidimeni\\_Scandal#cite\\_note-8](https://en.wikipedia.org/wiki/Life_Healthcare_Esidimeni_Scandal#cite_note-8) (accessed 28 August 2018).

<sup>58</sup> Staff Reporter (n 55 above).

<sup>59</sup> As above.

<sup>60</sup> As above.

<sup>61</sup> As above.

<sup>62</sup> As above.

### 2.3 Persons living with mental health issues and dignity

Psychiatrically ill patients are vulnerable and have poor insight and judgment.<sup>63</sup> The psychiatrist should act as an advocate for patient rights, uphold good values and respect the patient's self-determination as far as possible.<sup>64</sup> Special moral and bioethical deliberation is imperative when diseases of the brain are involved.<sup>65</sup> Steinmann states that in a broad and general sense, respect for dignity implies respect for the autonomy of each person, and the right of each not to be devalued as a human being or treated in a degrading or humiliating manner.<sup>66</sup> As a moral view, dignity represents the essence of what it means to be a human being, whereas, in the recognition of it as a human right, it legalises the notion that the essence of humanity must equally be acknowledged and respected.<sup>67</sup>

Steinmann points towards Kant<sup>68</sup>, who formulated an understanding of dignity based on man's ability to reason autonomously and to make his own decisions, but at the same time being bound to obey duties imposed by moral law.<sup>69</sup> In the Kantian sense, the worth of a person has no price, admits to no substitute, and cannot be traded off for anything in the world.<sup>70</sup> Dignity is ascribed to human beings independent of their particular accomplishments, merits or praiseworthiness.<sup>71</sup> Dignity refers to a kind of worth that is not contingent on being useful, attractive, pleasant or otherwise serving the ends of others.<sup>72</sup>

Humanistic psychology<sup>73</sup> which corresponds closely with the person-oriented approach<sup>74</sup> of Abraham Maslow (1908 - 1970)<sup>75</sup> and Carl Rogers (1902 - 1987),<sup>76</sup>

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<sup>63</sup> W Pienaar 'Ethics in mental healthcare' in K Moodley (ed) (2011) *Medical ethics, law and human rights. A South African perspective* 21.

<sup>64</sup> Pienaar in Moodley (n 63 above) 21.

<sup>65</sup> As above.

<sup>66</sup> R Steinmann 'The core meaning of human dignity' available at [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812016000100023](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812016000100023) (accessed 22 August 2018).

<sup>67</sup> Steinmann (n 66 above).

<sup>68</sup> B Duignan & OA Bird 'Immanuel Kant German Philosopher' Immanuel Kant (22 April 1724 - 12 February 1804) was born in Königsberg, Prussia (now Kaliningrad, Russia). He was a German philosopher whose comprehensive and systematic work in epistemology (the theory of knowledge), ethics, and aesthetics greatly influenced all subsequent philosophy, especially the various schools of Kantianism and Idealism. He was one of the foremost thinkers of the Enlightenment and arguably one of the greatest philosophers of all time; available at <https://www.britannica.com/biography/Immanuel-Kant> (accessed 7 September 2018).

<sup>69</sup> Steinmann (n 66 above).

<sup>70</sup> As above.

<sup>71</sup> As above.

<sup>72</sup> As above.

<sup>73</sup> Carr (n 17 above) 343. The humanistic psychology movement places emphasis on the positive rather than negative aspects of the human condition.

regards the person as responsible, choosing freely between available possibilities, always being in a process of growth, striving to realise their potential (self-actualisation) and to be truly themselves.<sup>77</sup> Maslow viewed self-actualised people as those who can be concerned with themselves but are also free to recognise the needs and desires of others; they are capable of responding to the uniqueness of people and situations rather than responding in stereotyped ways; they can have intimate relationships with at least a few special people; they can be spontaneous and creative and can resist to conform and assert themselves while still responding to the demands of reality.<sup>78</sup>

Maslow further stated that people are basically good or neutral rather than evil, that in everyone there is an impulse towards growth or the fulfilment of potential and that psychopathology<sup>79</sup> is the result of twisting and frustration of the essential nature of the person.<sup>80</sup> Maslow added that society often causes such twisting and frustration and it becomes problematic when assumed that the result of this twisting and frustration is the essential nature of the person.<sup>81</sup> One must rather recognise what could occur if these obstacles were removed.<sup>82</sup> Humanistic psychology refuses to permit reducing the worth of a person to a label such as a mental health diagnosis.<sup>83</sup> Humanistic psychology is drawn to a holistic approach that appreciates the person as more than the sum of their cognitive, behavioural, and anatomical parts.<sup>84</sup> In

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<sup>74</sup> As above 343 Carl Rogers developed a person-centered approach to psychotherapy. He proposed that if therapists provided patients with a positive therapeutic alliance whilst in non-directive therapeutic dialogue, it would create a context where in their innate motivation towards self-actualisation would find expression and where in the problems they present with, would resolve.

<sup>75</sup> Mischel (n 46 above) 113. 'One of the most influential spokesman for the importance of becoming 'in touch' with one's true feelings and fulfilling oneself totally was Abraham Maslow...'

<sup>76</sup> As above 108 '...Roger's theory highlights many of the chief points of the phenomenological and humanistic approach to personality. It emphasizes the person's perceived reality, his subjective experiences, his organismic striving for actualization, his potential for growth and freedom'.

<sup>77</sup> LA Pervin & OP John (2001). *Personality. Theory and research* 208.

<sup>78</sup> Pervin & John (n 77 above) 209.

<sup>79</sup> JC Coleman, JN Butcher & RC Carson (1984) *Abnormal psychology and modern life* 15 Psychopathology is also known as abnormal behaviour. Abnormal literally means 'away from the normal'. On a psychological level there is no 'ideal' model or even 'normal' model of human functioning to use as base of comparison. Any definition of 'abnormal' is somewhat arbitrary. 'Normal' and 'abnormal' are meaningful only with reference to a given culture – behaviour that deviates from society's norms. 'Abnormal' can also be understood as behaviour which interferes with the well-being of the individual and/or the group.

<sup>80</sup> Pervin & John (n 68 above) 209.

<sup>81</sup> As above 208.

<sup>82</sup> As above.

<sup>83</sup> BD Robbins (January 2014) Society for humanistic psychology. Newsletter 'Human dignity and humanistic values. A call to humanistic psychology's mission' available at <http://www.apadivisions.org/division-32/publications/newsletter/humanistis/2014/01/dignity.aspx> (accessed 11 September 2018).

<sup>84</sup> Robbins (n 83 above).

humanistic psychology it is understood that the person, in an interpersonal context, is not reducible to mere social validity and that no person is 'nothing but a social construction'; the person transcends reductionistic labels and simple categories by virtue of his dignity.<sup>85</sup> In the humanistic approach, to relate to the other person as a person of dignity, is to engage with them in an 'I-Thou' encounter, as opposed to an 'I-It' encounter.<sup>86</sup>

The desire for respect and dignity does not change when a person becomes ill or disabled – it may indeed even grow stronger.<sup>87</sup> The caregiver<sup>88</sup> must respect the patient's<sup>89</sup> privacy on a physical and emotional level by, for example, closing the door when helping them undress or use the bathroom, knocking before opening a closed door, and not discussing confidential information with other people, even family members, without their permission.<sup>90</sup> The caregiver must respect their right to make choices in the form of deciding what to eat or what to wear, for instance.<sup>91</sup> The caregiver must treat the person with dignity in the form of listening to their concerns and opinions and letting them know that they are important.<sup>92</sup> The caregiver must involve the patient in as many decisions as possible, include them in conversations, and speak to them as an adult, even if not certain of how much they understand.<sup>93</sup>

## **2.4 Persons living with mental health issues and stigma**

The stigma of mental illness is one of the most harmful obstacles to improved global mental health.<sup>94</sup> A great deal of the stigma associated with mental disorders arise from the belief that people can 'pull themselves together' and then recover from a mental disorder.<sup>95</sup> This judgment adds an extra layer of isolation and pain to an

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<sup>85</sup> As above.

<sup>86</sup> As above.

<sup>87</sup> National Caregivers Library. Copyright Washington State Department of Social and Health Services 'Respect and dignity' available at <http://www.caregiverslibrary.org/caregivers-resources/grp-emotional-issues/respect-and-dignity-article.aspx> (accessed 9 September 2018).

<sup>88</sup> Or mental healthcare worker.

<sup>89</sup> Or mental healthcare user.

<sup>90</sup> National Caregivers Library (n 87 above).

<sup>91</sup> As above.

<sup>92</sup> As above.

<sup>93</sup> As above.

<sup>94</sup> Freeman in Visser (n 12 above) 185.

<sup>95</sup> Staff Reporter (n 55 above).

already suffering individual.<sup>96</sup> Mental disorders are not reflections of a weak character and cannot be treated with a change of attitude or by will alone.<sup>97</sup>

For a person with little financial support, the mental disorder may impose an additional financial burden on the family, due to loss of earnings, accompanied by resentment towards the mentally ill person, disruption of the small space that the family may occupy, cost to the family for the treatment and probably old-fashioned medicines with greater side effects.<sup>98</sup> The mentally ill person is more likely to be evicted and as little or no community psychiatric services are available, may end up begging on the streets and/or disrupting community life.<sup>99</sup> Such outcomes increase stigmatisation of the mentally ill, which adds to the discrimination and isolation of people with mental illness.<sup>100</sup> Unfortunately, even if individual therapy would have been a force for personal and social change, persons with the highest likelihood of developing mental disorders are the least likely to have access to professional help as the ratios of psychologists and psychiatrists to population in poor countries are very low.<sup>101</sup>

Community psychology<sup>102</sup> may be used to address the presence of stigma.<sup>103</sup> There are three critical principles of good practice within a community psychology framework, spanning different approaches, namely a sense of community should be developed; decision making should be participatory; and people should be empowered through the process of the intervention.<sup>104</sup>

Directly involving persons suffering from mental health problems and stigma and their families in redressing the problem is likely to have the greatest impact on outcomes.<sup>105</sup> An intervener may therefore rather mobilise mentally ill people and/or

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<sup>96</sup> As above.

<sup>97</sup> As above.

<sup>98</sup> Freeman in Visser (n 12 above) 181.

<sup>99</sup> As above.

<sup>100</sup> As above.

<sup>101</sup> As above 183, 184.

<sup>102</sup> M Visser 'Community Psychology' in M Visser (ed) *Contextualizing community psychology in South Africa* 5 It is difficult to capture the complexities inherent in the theory and practice of Community Psychology in a single definition. Two of the definitions are as follows: 'Community Psychology is about an attempt to find alternatives dealing with deviance from societal-based norms...it is an attempt to support every person's right to be different without the risk of suffering material and psychological sanctions'. 'Community psychology focuses on social issues, social institutions and other settings that influence groups and organisations. The goal is to optimise the wellbeing and alternative interventions designed in collaboration with affected community members'.

<sup>103</sup> Freeman in Visser (n 12 above) 185.

<sup>104</sup> As above.

<sup>105</sup> As above.

their families to tackle the issue of stigma and discrimination.<sup>106</sup> Short-term objectives to address stigma include a community campaign to educate the public about mental illness, requests for greater tolerance for people with mental illness and calls for local businesses to employ people with mental disabilities as part of their quotas of employment of disabled people.<sup>107</sup> Medium-term objectives could be the creation of an on-going organisation operated by people with mental illness to take up issues concerning the mentally ill and to develop links with similar international organisations.<sup>108</sup> Longer-term objectives may be to lobby the government for improved legislation and rights for people with mental disability and better community services for mentally disabled people, allowing them to live independently with their families, rather than in institutions.<sup>109</sup> A project like this can be extremely difficult to implement as mentally ill people, especially the poor and women, have often been so marginalised by stigma and other social forces that they are unable or unwilling to take control of their situation and to organise themselves.<sup>110</sup> An intervener would have to be patient and may initially have to take more organisational responsibility but with a plan to extract themselves and to ensure that the long-term participatory membership of an organisation comprises of empowered members.<sup>111</sup>

If a community-based project that addresses stigma and discrimination is successful, it may prevent people with mental disorders falling into poverty.<sup>112</sup> By promoting gainful employment of people with mental disorders and by ensuring adequate treatment for them, it may be possible to prevent them from becoming poverty stricken, mocked and ostracised because of their condition.<sup>113</sup> If a person with a mental disorder works in a poor community to start with, the process of organising and taking control of their own life can be extremely liberating for this person and family members, and the skills and associated confidence they may acquire by being involved in such an anti-stigma project can be markedly useful to the person in managing their personal life and in dealing with issues to remedy their poverty.<sup>114</sup>

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<sup>106</sup> As above.

<sup>107</sup> As above.

<sup>108</sup> As above.

<sup>109</sup> As above.

<sup>110</sup> As above.

<sup>111</sup> As above.

<sup>112</sup> As above.

<sup>113</sup>As above.

<sup>114</sup> As above 186.

## 2.5 Changing attitudes towards mental health

In the later years of the nineteenth century the beginnings of what is known today as a scientific, or experimentally oriented view of abnormal behaviour<sup>115</sup> emerged, with the application of this knowledge to improve the situation of disturbed persons.<sup>116</sup>

There were advances in the study of biological and anatomical factors that underlie physical and mental disorders.<sup>117</sup> Much progress has been made since the initial belief that demons cause mental disorders up to scientific proof of how brain pathology can cause a specific disorder.<sup>118</sup> Among these developments was the gradual acceptance of mental patients as afflicted persons in need of professional attention.<sup>119</sup>

By the first decade of the twentieth century psychology laboratories and clinics were flourishing with a great deal of research being done and many scientific journals originated in this period.<sup>120</sup> Today, there are magazines aimed specifically at the general public to communicate new findings and to ensure that new discoveries become widely known.<sup>121</sup> However, the sheer volume of information available can cause confusion and controversy.<sup>122</sup>

Although the 'supernatural demons' have been left behind, there now exist complex views of the factors behind abnormal behaviour, whether biological, psychological, or socio-cultural.<sup>123</sup>

All people have vulnerabilities or 'weak spots' that under certain circumstances render them susceptible to behaving abnormally.<sup>124</sup> Whether or not a person behaves in such a manner appears to depend on the number, nature or degree of these vulnerabilities, and on their combination in the person, as well as on the nature

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<sup>115</sup> Coleman, Butcher & Carson (n 79 above) 15. Abnormal literally means 'away from the normal'. On a psychological level there is no 'ideal' model or even 'normal' model of human functioning to use as base of comparison. Any definition of 'abnormal' is somewhat arbitrary. 'Normal' and 'abnormal' are meaningful only with reference to a given culture – behaviour that deviates from society's norms. 'Abnormal' can also be understood as behaviour which interferes with the wellbeing of the individual and/or the group.

<sup>116</sup> As above 51.

<sup>117</sup> As above.

<sup>118</sup> As above.

<sup>119</sup> As above 53.

<sup>120</sup> As above.

<sup>121</sup> As above.

<sup>122</sup> As above.

<sup>123</sup> As above.

<sup>124</sup> As above 93.

and severity of life challenges faced at a specific point in time.<sup>125</sup> A severe mental breakdown may as often as not be the consequence of 'bad luck'.<sup>126</sup>

## **2.6 Persons with mental health issues, and the role and conduct of the mental healthcare worker**

People are concerned with living more comfortably with their life problems, and also with improving their human effectiveness and reaching their true potential.<sup>127</sup> Although mastery of a person's environment is important to them, they also do introspection for self-understanding and development.<sup>128</sup> They want help with a wide range of philosophical questions about the meaning and purpose of life, and also with problem-solving skills.<sup>129</sup>

Assisting with counselling and psychotherapy offers great challenges, rewards and opportunities to persons who wish to help fellow humans.<sup>130</sup> In this context 'help' is defined as creating conditions for people to fulfil their need for security, love, respect, self-esteem, decisive action, self-actualising growth, and providing resources and skills that will enable people to help themselves.<sup>131</sup>

The opening statement in the American Psychological Association's (APA) *Ethical Standards of Psychologists* reads, 'Psychologists respect the dignity and worth of the individual and honor the preservation and protection of fundamental human rights'.<sup>132</sup> A mark of the psychology profession is its willingness to work with other professional disciplines towards the best interests of the client.<sup>133</sup> The APA<sup>134</sup> further indicates that one of the characteristics of a 'good' profession is the freedom to accept its responsibilities and to carry out such profession in the manner dictated by its own

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<sup>125</sup> As above.

<sup>126</sup> As above.

<sup>127</sup> Brammer & Shostrom (n 52 above) Preface xi.

<sup>128</sup> As above.

<sup>129</sup> As above.

<sup>130</sup> As above 3.

<sup>131</sup> As above.

<sup>132</sup> As above 22.

<sup>133</sup> As above 23.

<sup>134</sup> 'American Psychological Association' The American Psychological Association (APA) is the leading scientific and professional organization representing psychology in the United States, with more than 115 700 researchers, educators, clinicians, consultants and students as its members. Their mission is to advance the creation, communication and application of psychological knowledge to benefit society and improve people's lives; available at <http://www.apa.org/about/index.aspx> (accessed 7 September 2018).

wisdom.<sup>135</sup> The profession must not be persuaded by attempts intended to restrict its activities that demonstrably fulfil its social function and advance human values.<sup>136</sup>

It is important for the mental health worker to offer long-term psychotherapy to persons with mental health issues to eventually render these persons more comfortable with who they are and with others.<sup>137</sup> Professionals must avoid deluding themselves into thinking that they can be all things to all people – they must also be aware of their limitations and their need to help.<sup>138</sup> Professionals must guard against help turning into control, and using their clients to satisfy their own need for love, power or prestige.<sup>139</sup> Although professionals need a sense of accomplishment, seeing their clients becoming more self-sufficient, realising their hidden potential and functioning at higher levels of effective living, are rewarding in itself.<sup>140</sup>

Critical psychology<sup>141</sup> is particularly critical of the ethics in mainstream psychology.<sup>142</sup> Critical psychologists submit that because power lies with the professional and not with the community, ethical concerns are often described in terms that serve the interests of the professional, keeping them out of trouble, as opposed to benefitting the recipients of the services and hearing the voice of the community.<sup>143</sup> Critical psychologists hold that ethics should be a collaborative effort between the service providers and the mental healthcare recipients.<sup>144</sup> Mental healthcare recipients must have an input and become participants in defining ethical behaviour and they must be able to examine whose interests are served by the mental healthcare interventions.<sup>145</sup>

### 3. Conclusion

This chapter provided some insights, by no means comprehensive, into the notions of mental health, the prevalence of mental disorders, dignity, and persons living with

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<sup>135</sup> Brammer & Shostrom (n 52 above) 23.

<sup>136</sup> As above.

<sup>137</sup> W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 221.

<sup>138</sup> Brammer & Shostrom (n 52 above) 3.

<sup>139</sup> As above.

<sup>140</sup> As above.

<sup>141</sup> 'Critical psychology challenges mainstream psychology and attempts to apply psychological understandings in more progressive ways, often looking towards social change as a means of preventing and treating psychopathology' available at [https://en.wikipedia.org/wiki/Critical\\_psychology](https://en.wikipedia.org/wiki/Critical_psychology) (accessed 13 April 2018).

<sup>142</sup> G Viljoen & L Eskell-Blokland 'Critical approaches in community psychology' in Visser (ed) (2007) *Contextualizing community psychology in South Africa* 57.

<sup>143</sup> Viljoen & Eskell-Blokland in Visser (n 142 above) 57.

<sup>144</sup> As above.

<sup>145</sup> As above.

mental health issues, stigma, changing attitudes towards mental health, and the role and conduct of the mental healthcare worker.

Over time, human dignity has found its way through constitutionalism - written or unwritten.<sup>146</sup> Dignity plays an essential role in human rights and this is given authoritative approval by the courts.<sup>147</sup>

Chapter 4 presents medico-legal perspectives on a person's dignity as a moral and constitutional value.

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<sup>146</sup> AK Sikri 'Human dignity as a constitutional value' available at <http://blog.hawaii.edu/elp/files/2016/06/HUMAN-DIGNITY-HAWAI.pdf> (accessed 13 April 2018).

<sup>147</sup> Sikri (n 146 above).

## Chapter 4

# Medico-legal perspectives on dignity as a moral and constitutional value

*'The most luxurious possession, the richest treasure anybody has, is his personal dignity.'*

(Jackie Robinson)<sup>1</sup>

### 1. Introduction

Practice of medicine<sup>2</sup> can render a great service to society, provided that medical professionals apply due care, sincerity, efficiency and skill.<sup>3</sup> The cordial relationship between doctor<sup>4</sup> and patient<sup>5</sup> has undergone drastic changes due to corporatisation of the medical profession that resulted in the commercialisation of this noble profession, much against the spirit of the Hippocratic Oath.<sup>6</sup>

Although rapid advancements in medical science and technology have the desired effect of medical professionals improving the diagnosis and treatment of users, they also became tools for commercial exploitation.<sup>7</sup>

Medical law is undergoing a massive change in developing law pertaining to professional misconduct and negligence.<sup>8</sup>

This chapter offers medico-legal perspectives on human dignity as a moral and constitutional value.

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<sup>1</sup> Available at [https://www.brainyquote.com/quotes/jackie\\_robinson\\_802703](https://www.brainyquote.com/quotes/jackie_robinson_802703) (accessed 31 October 2018).

Jack Roosevelt Robinson (January 31, 1919 – October 24, 1972) was an American professional baseball player who became the first African American to play in Major League Baseball (MLB) in the modern era available at [https://en.wikipedia.org/wiki/Jackie\\_Robinson](https://en.wikipedia.org/wiki/Jackie_Robinson) (accessed 3 November 2018).

<sup>2</sup> In the context of this dissertation, also medical healthcare and psychological healthcare.

<sup>3</sup> BN Raveesh, RB Nayak & SF Kumbar (19 October 2016) 'Preventing medico-legal issues in clinical practice' Suppl 1 S15 – S20 *Annals of Indian Academy of Neurology* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5109754/> (accessed 1 August 2018).

<sup>4</sup> Or medical / psychological professional or physician.

<sup>5</sup> Or user or recipient of medical care.

<sup>6</sup> L DiMauro & T Grant (eds) (2006) *Ethics. Opposing viewpoints* 43.

<sup>7</sup> DiMauro & Grant (n 6 above) 43.

<sup>8</sup> As above.

## 2. Moral and ethical behaviour

Emotions of charity and empathy are the primary components of moral behaviour.<sup>9</sup> If we do not care enough or do not empathise with others, we will not see or feel the need to act morally.<sup>10</sup> Ethics, also known as moral philosophy, attempts to define what is right and what is wrong in human behaviour.<sup>11</sup> In an attempt to discover how certain actions may benefit or harm themselves and society, some people look to religious teachings whereas others use logic.<sup>12</sup> To a certain degree, ethics is the mental vision of individuals who must battle with their consciences to make moral decisions.<sup>13</sup> Societies must have a core set of values to use in guiding them in making policies that will benefit the nation as a whole.<sup>14</sup> Ethics is knowledge as well as action, which makes it a civic virtue concerned with how people live in society, and it demands an understanding of how one's actions affect other people.<sup>15</sup> When considering an ethical question, whether of an individual or of the society in which one functions, one refers to a set of principles held as profoundly moral.<sup>16</sup> This set of values includes honesty, kindness, compassion, generosity and fairness.<sup>17</sup> Actions that are cherished are those that increase the supply of human happiness, those that do not contribute to human suffering, those that are in agreement with an equal society, and those that increase individual freedom.<sup>18</sup> It can be difficult to satisfy any one of these principles without neglecting another and in answering an ethical question, it often asks for mediation and diplomacy among 'quarrelling factions', each with its own demands.<sup>19</sup> The challenge lies in devising a course of action that best serves all of these principles.<sup>20</sup>

Critical psychologists<sup>21</sup> hold that ethics should be a joint effort between the service providers and the recipients of these services.<sup>22</sup> The recipients should have an input

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<sup>9</sup> DiMauro & Grant (n 6 above) 97, 98.

<sup>10</sup> As above.

<sup>11</sup> As above.

<sup>12</sup> As above.

<sup>13</sup> As above.

<sup>14</sup> As above.

<sup>15</sup> As above.

<sup>16</sup> As above.

<sup>17</sup> As above.

<sup>18</sup> As above.

<sup>19</sup> As above.

<sup>20</sup> As above.

<sup>21</sup> 'Critical psychology challenges mainstream psychology and attempts to apply psychological understandings in more progressive ways, often looking towards social change as a means of preventing and treating psychopathology' available at [https://en.wikipedia.org/wiki/Critical\\_psychology](https://en.wikipedia.org/wiki/Critical_psychology) (accessed 13 April 2018).

in defining ethical behaviour and be afforded the ability to examine whose interests are served by the treatment regimes.<sup>23</sup>

Human dignity is a value - it implies that people are duty-bound to uphold it, treating every other human being in a dignified and humane manner.<sup>24</sup> Therefore, upholding human dignity is a universal human duty and a universal human responsibility.<sup>25</sup> In this regard, the Universal Declaration of Human Responsibilities<sup>26</sup> is instructive as it states that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and it implies further obligations or responsibilities.<sup>27</sup> The declaration states that every person, regardless of gender, ethnic origin, social status, political opinion, language, age, nationality or religion has a responsibility to treat all people in a humane way.<sup>28</sup> Inhumane behaviour must not be supported in any form, and all people have a responsibility to strive for the dignity and self-esteem of all others.<sup>29</sup>

### 3. Medical ethics and law

Medical ethics and law are intrinsically interwoven with and have a continuous influence on the doctor-patient relationship.<sup>30</sup> The rules of medical ethics will at the same time and to a large extent be the legal obligation that the physician<sup>31</sup> must fulfil.<sup>32</sup>

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<sup>22</sup> G Viljoen & L Eskell-Blokland 'Critical approaches in community psychology' in M Visser (ed) *Contextualizing community psychology in South Africa* (2007) 57.

<sup>23</sup> Viljoen & Eskell-Blokland in Visser (n 22 above) 57.

<sup>24</sup> N Goolam 'Human dignity – Our supreme constitutional value' (2001) Vol 4 No 1 *Potchefstroom Electronic Law Journal* available at <https://www.ajol.info/index.php/pej/article/view%20File/43490/27025> (accessed 28 June 2018).

<sup>25</sup> Goolam (n 24 above).

<sup>26</sup> Universal Declaration of Human Responsibilities 'On March 25-28, 1997 the United Nations Educational, Scientific, Cultural Organization (UNESCO), headquartered in Paris, held the first meeting of a Committee of philosophers representing a wide range of religious, ethnic, ethical and philosophical traditions to produce a Declaration providing a philosophical basis for a global ethic' available at [https://www.ykliitto.fi/sites/ykliitto.fi/files/universal\\_declaration\\_of\\_human\\_responsibilities.pdf](https://www.ykliitto.fi/sites/ykliitto.fi/files/universal_declaration_of_human_responsibilities.pdf) (accessed 23 October 2018).

<sup>27</sup> Goolam (n 24 above).

<sup>28</sup> As above.

<sup>29</sup> As above.

<sup>30</sup> D Giesen (1988) *International medical malpractice law: A comparative study of civil liability arising from medical care* 669.

<sup>31</sup> Or medical professional.

<sup>32</sup> Giesen (n 30 above) 669.

There is an increasing number of patients<sup>33</sup> who insist on participating in the process of healthcare decision making.<sup>34</sup> Patients now inform themselves more thoroughly on treatment they receive and are more frequently inclined to litigate when they believe that medical malpractice took place.<sup>35</sup> Patients also start to doubt whether procedures they are submitted to in large healthcare centres such as hospitals and university clinics are in their best interest.<sup>36</sup> They realise that large healthcare institutions occasionally serve multiple functions such as caring for patients, training professionals and conducting research, and therefore they may fear being subjected to treatment and procedures that may be predominantly in the interest of that institution's training functions or research designs, rather than their own.<sup>37</sup> Another conflict that may arise is the patient's best interest and the professional's view of themselves as a scientist.<sup>38</sup> There are ever-increasing diagnostic aids, surgical tools, supportive equipment and pharmaceutical products available to physicians, and the question remains whether the accessibility and use of such is indeed in the patient's best interest.<sup>39</sup> Patients are now more aware of treatment using new diagnostic or therapeutic methods, of which the safety or side effects may not have been fully established.<sup>40</sup> They are becoming less tolerant of withheld information, more so if they feel that the physician remains unhelpful, being evasive or avoids responding to requests for information.<sup>41</sup> The only way to ensure the patient's best interests is by obtaining their consent based on disclosure of all relevant information.<sup>42</sup>

The medical profession has its own ethical parameters and code of conduct, but negligence by medical practitioners is determined by judges who are not trained in medical science.<sup>43</sup> Being sued leaves many physicians feeling that the patient is grossly ungrateful.<sup>44</sup> The physician also feels humiliated and that the future practise of his profession may become intolerably difficult.<sup>45</sup> In medico-legal cases judges rely on experts' opinion and make a ruling based on the basic principles of

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<sup>33</sup> Or recipients or users.

<sup>34</sup> Giesen (n 30 above) 685.

<sup>35</sup> As above.

<sup>36</sup> As above 686.

<sup>37</sup> As above.

<sup>38</sup> As above 687.

<sup>39</sup> As above.

<sup>40</sup> As above 688.

<sup>41</sup> As above.

<sup>42</sup> As above.

<sup>43</sup> Raveesh, Nayak & Kumbar (n 3 above).

<sup>44</sup> Giesen (n 30 above) 722.

<sup>45</sup> As above.

reasonableness, care and foresight.<sup>46</sup> The judge should demonstrate understanding of the risk inherent to the medical profession.<sup>47</sup> On the other hand, the physician must realise that in terms of private law and the need for appropriate distribution of risk, even slight carelessness in exercising their profession may lead to civil liability.<sup>48</sup> Law, society and the courts should be aware of established codes of medical ethics in order to understand the professional background and ethical commitment that serve as the foundation for the physician's actions.<sup>49</sup> The courts ultimately need to establish if a physician's conduct is in agreement with the practices of their profession and if it conforms to the standard of reasonable care as demanded by law.<sup>50</sup>

The degree of negligence depends on the full context, including place, time, individuals involved, and the extent of complications.<sup>51</sup> The difference between medical negligence and medical error is well established, and the principles are clearly outlined.<sup>52</sup>

The medical practitioner's duty of care entails deciding whether or not to accept the case, what treatment to provide, and administration of such treatment.<sup>53</sup> If a breach in any of these duties occurs, the patient has the right to take action for negligence against the medical practitioner.<sup>54</sup> To succeed in establishing negligence, the patient must prove that the damage would not have occurred if not for the medical practitioner's negligence; or that the medical practitioner's negligence materially contributed to or materially increased the risk of injury; or if the claim is for negligent nondisclosure, had they been adequately informed they would not have agreed to the treatment.<sup>55</sup>

Patients sue due to a feeling of not being heard, their needs not attended to, nobody seemingly caring, and as a result, a negative outcome resulted due to a mistake or negligence.<sup>56</sup> The burden of proof is on the person claiming negligence against a

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<sup>46</sup> Raveesh, Nayak & Kumbar (n 3 above).

<sup>47</sup> Giesen (n 30 above) 723.

<sup>48</sup> As above.

<sup>49</sup> As above 669.

<sup>50</sup> As above 694.

<sup>51</sup> Raveesh, Nayak & Kumbar (n 3 above).

<sup>52</sup> As above.

<sup>53</sup> As above.

<sup>54</sup> As above.

<sup>55</sup> As above.

<sup>56</sup> As above.

medical practitioner.<sup>57</sup> A medical practitioner can be held liable for negligence only if it can be proven that they are guilty of a failure which no doctor with ordinary skills would be guilty of if acting with reasonable care.<sup>58</sup> The law requires a higher than usual standard of evidence to support an allegation of negligence against a medical practitioner.<sup>59</sup> When the damage is too remote, it is not considered as an immediate result of medical negligence.<sup>60</sup>

Patients expect doctors and hospitals to provide medical treatment with all the knowledge and skill at their disposal and that they will not be harmed in any way because of negligence, carelessness, or the reckless attitude of staff.<sup>61</sup> Although a medical practitioner may not be in a position to save their patient's life at all times, they are expected to use their singular knowledge and skill in the most appropriate manner and to always keep in mind the interest of the patient.<sup>62</sup> Therefore, it is expected that a physician performs necessary examinations or seeks a report from the patient.<sup>63</sup> Unless it is an emergency, the medical practitioner must obtain informed consent from the patient before proceeding with any major treatment, surgical operation, or invasive examination.<sup>64</sup> A medical practitioner's and/or a hospital's failure to meet this obligation is essentially a delict (a civil wrong) where a breach in the contractual obligation (*right in personam*) may be remedied by judicial intervention by a claim of damages for harm caused.<sup>65</sup>

When a patient consults with a medical practitioner, the medical practitioner owes their patient the duty of care in deciding whether to undertake the case, the duty of care in deciding what treatment to give, and the duty of care in the administration of that treatment.<sup>66</sup> A breach of any of these duties may give a cause of action for negligence on which basis the patient may recover damages from his doctor.<sup>67</sup>

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<sup>57</sup> As above.

<sup>58</sup> As above.

<sup>59</sup> As above.

<sup>60</sup> As above.

<sup>61</sup> MA Pandit & S Pandit (Jul-Sep 2009) 'Medical negligence: Coverage of the profession, duties, ethics, case law, and enlightened defence - A legal perspective' 3 *Indian Journal of Urology* 372 – 378 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779963/> (accessed 23 October 2018).

<sup>62</sup> Pandit & Pandit (n 61 above).

<sup>63</sup> As above.

<sup>64</sup> As above.

<sup>65</sup> As above.

<sup>66</sup> As above.

<sup>67</sup> As above.

It is important for the medical practitioner to let the patient and their caregiver know that their problems are understood.<sup>68</sup> The medical practitioner must communicate clearly and effectively, taking time to ensure that the patient understands their diagnosis, treatment, and medication plans. Their understanding should be confirmed by letting them explain it back in their own words.<sup>69</sup> The time spent allowing the patient to fully express their concern determines the medical practitioner's ability to show concern, empathy, and likeability.<sup>70</sup> If a specific complication is a known risk, it should be on the consent form for the medical procedure.<sup>71</sup> When medical practitioners are honest about medical errors and apologise to the patient, the overall cost of medical malpractice may be reduced.<sup>72</sup> However, it depends on the type of error (gross and real), motive of the victim (non-mischievous), and situational influences (indefensible).<sup>73</sup> Taking time to think like the patient and to understand the condition from their perspective can help the medical practitioner to become more empathetic, and to build a better relationship.<sup>74</sup> A patient is less likely to sue a medical practitioner with whom they have a positive relationship, even if something goes wrong.<sup>75</sup> When a patient contributes to the damage caused in the course of treatment they are guilty of contributory negligence, for example not adhering to the recommended treatment or take part in activities prohibited by the medical practitioner.<sup>76</sup>

#### **4. Inherent dignity held by every person and supported by the Constitution, 1996**

Every person possesses inherent dignity and the right to have their dignity respected and protected.<sup>77</sup> South Africa is in the process of undergoing a transformation from a formal, positivistic vision of law to a substantive vision of law and the single most significant factor in this transformation is the existence of constitutional values.<sup>78</sup> Courts, and in particular the Constitutional Court must decide cases on the basis of the values of human dignity, equality and freedom.<sup>79</sup> Of these

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<sup>68</sup> As above.

<sup>69</sup> As above.

<sup>70</sup> As above.

<sup>71</sup> As above.

<sup>72</sup> As above.

<sup>73</sup> Raveesh, Nayak & Kumbar (n 3 above).

<sup>74</sup> As above.

<sup>75</sup> As above.

<sup>76</sup> As above.

<sup>77</sup> Goolam (n 24 above).

<sup>78</sup> As above.

<sup>79</sup> As above.

values, human dignity, takes pride of place.<sup>80</sup> In sections 1, 7, 36 and 39 of the Constitution of South Africa, it takes primary mention.<sup>81</sup> Section 1 of the Constitution provides that The Republic of South Africa is one, sovereign democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms.<sup>82</sup> It is highly significant that human dignity appears before both equality and freedom, as essentially, human rights law must serve the purpose of effectively protecting the human dignity of the members of any society.<sup>83</sup>

In the South African Constitutional Court judgment of *S v Makwanyane and Another*<sup>84</sup> the view was expressed that recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings.<sup>85</sup> Human beings are therefore entitled to be treated as worthy of respect and concern.<sup>86</sup> This right is the foundation of many of the other rights that are specifically entrenched in the Bill of Rights.<sup>87</sup> The Constitution of South Africa now refers to the 'inherent dignity' of all people, thus asserting that respect for human dignity, and all that flows from it, as a quality of life itself and not a privilege granted by the state.<sup>88</sup>

## 5. The notion of tolerance

For dignity to be truly respected and protected, as provided for in section 10 of the South African Constitution, the notion of tolerance, labelled by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) as the 'endangered virtue', demands broader understanding.<sup>89</sup> UNESCO's 1995 Declaration on the Principles of Tolerance states that tolerance has always been considered a moral virtue and that it is also the foundation of democracy and human rights.<sup>90</sup> Tolerance entails the appreciation of diversity, the ability to live and let live, the ability to adhere to one's convictions while accepting that others adhere to theirs, and the

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<sup>80</sup> As above.

<sup>81</sup> As above.

<sup>82</sup> As above.

<sup>83</sup> As above.

<sup>84</sup> 'S v Makwanyane' last edited 23 August 2017 available at [https://en.wikipedia.org/wiki/S\\_v\\_Makwanyane](https://en.wikipedia.org/wiki/S_v_Makwanyane) (accessed 11 May 2018).

<sup>85</sup> Goolam (n 24 above).

<sup>86</sup> As above.

<sup>87</sup> As above.

<sup>88</sup> As above.

<sup>89</sup> As above.

<sup>90</sup> As above.

ability to enjoy one's rights and freedoms without infringing on those of others.<sup>91</sup> Tolerance is fostered by knowledge, openness, communication and freedom of thought, conscience and belief.<sup>92</sup> It is harmony in diversity and while it is a moral duty, it is also a political and legal requirement.<sup>93</sup> Above all, tolerance is an active attitude spurred on by recognition of the universal human rights and fundamental freedoms of others and it is to be exercised by individuals, groups and states.<sup>94</sup>

## **6. Conclusion**

This chapter dealt with the concepts of moral and ethical behaviour, medical ethics and law, the inherent dignity of every person as supported by the Constitution, and the notion of tolerance.

Chapter 5 focuses on dignity as underpinned by the Constitution. The influence of the Constitution on several underlying themes and principles in medical law and ethics, and the enforceability of dignity as a basic human right, will also be discussed.

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<sup>91</sup> As above.

<sup>92</sup> As above.

<sup>93</sup> As above.

<sup>94</sup> As above.

## Chapter 5

### The effect of the Constitution, 1996

*'The Logos of God has become human so that you might learn from a human being how a human being may become human.'*

(Clement of Alexandria)<sup>1</sup>

#### 1. Introduction

As the Constitution, 1996<sup>2</sup> is the supreme law in South Africa. It serves as a standard against which all law, and the conduct arising from such law, is evaluated.<sup>3</sup> If a law or conduct does not meet this standard, it is considered unconstitutional and therefore invalid.<sup>4</sup> It entrenches constitutional values and fundamental rights, and the structure, operation and powers of government are based in it.<sup>5</sup> It provides for a range of government institutions supporting a constitutional democracy, such as, among others, the South Africa Human Rights Commission.<sup>6</sup>

#### 2. Constitutional values

The Constitution, underpinned by universally-accepted values and norms, being the supreme law of the land, is the ultimate value-laden yardstick against which nearly everything in South Africa is valued and reviewed.<sup>7</sup>

The pre-ambule to the Constitution refers to a society based on democratic values, social justice and fundamental human rights.<sup>8</sup> These democratic values are, among others, freedom, and the achievement of human equality and human dignity.<sup>9</sup> The

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<sup>1</sup> Titus Flavius Clemens, also known as Clement of Alexandria was a Christian theologian who taught at the Catechetical School of Alexandria. A convert to Christianity, he was an educated man who was familiar with classical Greek philosophy and literature; available at [https://en.wikipedia.org/wiki/Clement\\_of\\_Alexandria](https://en.wikipedia.org/wiki/Clement_of_Alexandria) (accessed 3 November 2018).

<sup>2</sup> Constitution of the Republic of South Africa, 1996.

<sup>3</sup> L Kotzé, J Du Plessis & J Barnard-Naudé 'Sources of law and legal authority' in T Humby, L Kotzé & A Du Plessis *Introduction to law and legal skills in South Africa* (2016) 125.

<sup>4</sup> Kotzé, Du Plessis & Barnard-Naudé in Humby *et al* (n 3 above) 125.

<sup>5</sup> As above.

<sup>6</sup> As above.

<sup>7</sup> C Botha (2015) *Statutory interpretation. An introduction for students* 102.

<sup>8</sup> Botha (n 7 above) 102.

<sup>9</sup> As above.

spirit, purport and the objectives of the Bill of Rights must be promoted during the process of statutory interpretation.<sup>10</sup>

The courts are the guardians and enforcers of the values underlying the Constitution.<sup>11</sup> Basic fundamental rights can affect all aspects of the law, and because of their importance they are usually protected within the broad constitutional law of the state.<sup>12</sup> A bill of rights can only be properly understood as part of the constitutional law.<sup>13</sup> The South African Constitution incorporates an expansive Bill of Rights which has had and will continue to have an unparalleled impact on South African Law.<sup>14</sup> In upholding and protecting the Constitution and the human rights contained therein the courts must make certain value judgments in the interpretation and application of all legislation.<sup>15</sup> Since the values underlying the Constitution are not absolute, the interpretation of statutes can no longer be a mechanical reiteration of what was supposedly stated by parliament, but rather what is permitted by the Constitution.<sup>16</sup>

The Constitution distinguishes between 'rights' and 'values'.<sup>17</sup> It states *inter alia* that the Bill of Rights is a cornerstone of democracy in South Africa which enshrines the rights of all people, and which affirms the democratic values of human dignity, equality and freedom.<sup>18</sup> From a legal point of view a 'right' is defined as *inter alia*:

A good or favourable advantage; a claim or title that is morally just or legally granted as allowable or due to a person or something of a certain standard.<sup>19</sup>

In a legal context a 'value' refers to *inter alia*:

The precise meaning or significance of something; moral principles or accepted standards; the relation of one element to another or to the whole picture; and something of value or merit'.<sup>20</sup>

A right is directly enforceable as it is owed to someone and can be enforced.<sup>21</sup> A value is more abstract in nature and creates an inclination towards a standard or

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<sup>10</sup> As above.

<sup>11</sup> As above.

<sup>12</sup> As above.

<sup>13</sup> As above.

<sup>14</sup> B Bekink (2012) *Principles of South African constitutional law* 75, 76.

<sup>15</sup> Bekink (n 14 above) 75, 76.

<sup>16</sup> Botha (n 14 above). 103.

<sup>17</sup> Bekink (n 14 above) 44, 45.

<sup>18</sup> As above.

<sup>19</sup> As above.

<sup>20</sup> As above.

principle that must be determined in relation to the particular circumstances of a particular case.<sup>22</sup> The rights set out in the Constitution give power and effect to the values of the Constitution and these values must be interpreted in agreement with the values underlying the entire constitutional system.<sup>23</sup>

### **3. Fostering a rights culture**

The promotion and implementation of a rights culture in South Africa is another crucial constitutional function of the judiciary.<sup>24</sup> South Africa is a young and fragile democracy, and the inculcation of concepts such as openness, transparency, human dignity and substantive justice still need to grow.<sup>25</sup> Functions should include the establishment of the Constitution as a respected symbol of nationhood that cuts across racial, cultural, language, gender and ethnic barriers, and to foster respect for constitutionalism, the rule of law and a rights culture.<sup>26</sup> The Constitution and specifically the Bill of Rights are sometimes described as 'liberal'.<sup>27</sup> This refers to a tolerant attitude towards social issues that gives recognised superiority to the individual and personal freedom.<sup>28</sup> A further post-liberal element is that the state has an obligation to become involved in the fate of its subjects.<sup>29</sup>

### **4. The impact of law to maintain dignity and reduce stigma for persons needing mental healthcare**

Bezuidenhout reminds us of the 1 300 mental health patients who were transferred from a mental health facility, Life Esidimeni to non-governmental organisations.<sup>30</sup> She remarks that several organisations, among others the South African Depression and Anxiety Group (SADAG),<sup>31</sup> the Psychological Society of South Africa

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<sup>21</sup> As above.

<sup>22</sup> Bekink (n 14 above) 44, 45.

<sup>23</sup> As above.

<sup>24</sup> Botha (n 7 above) 201, 202.

<sup>25</sup> As above.

<sup>26</sup> As above.

<sup>27</sup> D Kleyn & F Viljoen (2014) *Beginner's guide for law students* 245.

<sup>28</sup> Kleyn & Viljoen (n 27 above) 245.

<sup>29</sup> As above.

<sup>30</sup> J Bezuidenhout 'Why South Africa is failing mental health patients and what can be done about it' available at [theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445](http://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445) (accessed 13 April 2018).

<sup>31</sup> The South African Depression and Anxiety Group (SADAG) is a registered Non-Profit Organisation. It is the leading voice of patient advocacy in the mental health sector, working in urban, peri-urban and the most rural communities across South Africa. It is at the forefront of increasing psychosocial education and training at various levels which involves the training of support group leaders, peer counsellors at a lay counselling level, progressing to the training and development of recognised mental health counsellors in the healthcare sector available at [http://www.sadag.org/index.php?option=com\\_content&view=article&id=2789:background-of-the-](http://www.sadag.org/index.php?option=com_content&view=article&id=2789:background-of-the-)

(PsySSA) <sup>32</sup> , and the South African Federation for Mental Health (SAFMH) <sup>33</sup> , warned against this move. <sup>34</sup> Nevertheless, the government still transferred these patients to organisations not equipped to manage and care for them. <sup>35</sup> As is widely known at this stage, the deaths were appalling. <sup>36</sup>

The Mental Healthcare Act 17 of 2002<sup>37</sup> heralded in a new era for South African psychiatry by replacing the Mental Health Act of 1973.<sup>38</sup> The Act was approved on 28 October 2002, and came into effect on 15 December 2004. <sup>39</sup> With the implementation of the Constitution law makers had a duty to ensure that all acts of parliament were updated and written to be in agreement with the new Constitution.<sup>40</sup>

The Mental Healthcare Act is founded on the ten basic principles as set out by the WHO that points the way to mental healthcare law.<sup>41</sup> In essence, the era of a human rights-driven ethos in patient care had arrived, with an expressly-stated orientation towards 'patient-centred' approach to psychiatric care.<sup>42</sup> In this scenario the patient becomes a 'mental healthcare user', and the psychiatrist becomes a 'mental healthcare practitioner', together with other professionals, as the procedures accompanying the Act permit medical practitioners with experience in psychiatry, together with a range of allied health professionals, for example, nurses, social workers and psychologists, a potential role in the assessment of the person's mental state contributing to the need for admission.<sup>43</sup> A further requirement of the Act is that

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south-african-depression-and-anxiety-group&catid=2:uncategorised&Itemid=101 (accessed 1 November 2018).

<sup>32</sup> The Psychological Society of SA (PsySSA) was formed in January 1994, uniting the various bodies that existed until then. PsySSA speaks authoritatively on matters concerning the mental health and psychosocial well-being of all South Africans available at <https://www.psyssa.com/about-us/what-is-psyssa> (accessed 16 September 2018).

<sup>33</sup> The South African Federation for Mental Health (SAFMH) is the largest national mental health organisation in South Africa. The strategic key focus areas of the SAFMH National Office are: The implementation of national awareness campaigns, empowerment of mental healthcare users and mental health organisations nationwide, advocating for the human rights of mental healthcare users and mental health research and information management available at <http://www.safmh.org.za/index.php/who-we-are> (accessed 1 November 2018).

<sup>34</sup> Bezuidenhout (n 30 above).

<sup>35</sup> As above.

<sup>36</sup> As above.

<sup>37</sup> Mental Healthcare Act 17 of 2002.

<sup>38</sup> CP Szabo & SZ Kaliski 'Mental health and the law: a South African perspective' available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5618904/> (accessed 10 July 2018).

<sup>39</sup> Szabo & Kaliski (n 38 above).

<sup>40</sup> As above.

<sup>41</sup> As above.

<sup>42</sup> As above.

<sup>43</sup> As above.

users be treated in the least restrictive manner possible and with the least discomfort and inconvenience, and as close to their homes as possible.<sup>44</sup>

Acute beds in psychiatric institutions are highly valued, with longer-stay beds more so.<sup>45</sup> This raises critical conditions for satisfying the Mental Healthcare Act, as everything is dependent on funding.<sup>46</sup> In an ideal scenario the user is assessed and treated locally, as envisaged by the Act.<sup>47</sup> The requirements of the Act presume there is a functional primary healthcare clinic, with an appropriately-trained family practitioner, who, if needed, can either refer the user to the community healthcare clinic for a psychiatric assessment and opinion, keep the user at that level, or refer to a district hospital, which ideally should have a functional psychiatric unit with the necessary facilities, staffing and access to medication.<sup>48</sup> If so, this would make it unnecessary for users to travel to distant regional and central hospitals, which in some instances requires further referral to specialised psychiatric hospitals.<sup>49</sup> However, although set out in the Act, it is reality that dictates, and until such time that there are fully functional community services operating as they should, it remains a work in progress.<sup>50</sup> Ideally, referrals from district hospital to consecutive levels of care should be on the basis of doctor-to-doctor referrals, as opposed to casualty 'walk-ins'.<sup>51</sup>

The Mental Healthcare Act potentially provides for clinicians to hold government legally accountable for appropriate resource allocation to ensure service delivery within the parameters of the Act.<sup>52</sup> Appropriate resource allocation is about balancing competing interests and regrettably, psychiatry is generally not viewed as a priority, notwithstanding the often-quoted axiom 'no health without mental health', together with the increased incidence of mental illness on the global burden of disease.<sup>53</sup> In this regard the emerging focus on public mental health with epidemiology, social determinants of health, patient advocacy and emphasis on wellness as important elements, deserves improved attention in specialist training.<sup>54</sup> Fortunately, it has

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<sup>44</sup> As above.

<sup>45</sup> As above.

<sup>46</sup> As above.

<sup>47</sup> As above.

<sup>48</sup> As above.

<sup>49</sup> As above.

<sup>50</sup> As above.

<sup>51</sup> As above.

<sup>52</sup> As above.

<sup>53</sup> As above.

<sup>54</sup> As above.

recently been introduced into the specialist training curriculum of the College of Psychiatrists within the Colleges of Medicine of South Africa.<sup>55 56</sup>

The National Mental Health Policy Framework and Strategic Plan (2013 - 2020)<sup>57</sup> is the country's first officially-endorsed national mental health policy.<sup>58</sup> This policy acknowledges that the country continues to face challenges in providing mental health services, including a high prevalence of mental disorders linked to social determinants like poverty, violence and substance abuse.<sup>59</sup> It indicates that mental health continues to be under-funded and under-resourced compared to other sectors within health.<sup>60</sup>

The Mental Healthcare Act promotes development of community-based mental health residential and day care services and facilities.<sup>61</sup> The Act advances the provision of community-based care, treatment and rehabilitation.<sup>62</sup> It compels persons who provide care, treatment and rehabilitation services to provide these services at these facilities in a manner that promotes the physical, spiritual, emotional and social well-being of mental healthcare users.<sup>63</sup> These services must aim to improve social competence by enhancing individuals' social skills, psychological and occupational functioning.<sup>64</sup>

The Mental Healthcare Act states that when an individual presents with symptoms of mental illness at a health establishment, such individual must be assessed.<sup>65</sup> According to section 25 of the Act (voluntary care, treatment and rehabilitation), a voluntary mental healthcare user who submits voluntarily to a health establishment for care, treatment and rehabilitation gives such user just claim to appropriate care, treatment and rehabilitation and referral to an appropriate establishment.<sup>66</sup>

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<sup>55</sup> Available at <http://www.collegemedsa.ac.za> (accessed 1 November 2018).

<sup>56</sup> Szabo & Kaliski (n 38 above).

<sup>57</sup> National Mental Health Policy Framework and Strategic Plan (2013 - 2020) available at <https://www.health-e.org.za/2014/10/23/policy-national-mental-health-policy-framework-strategic-plan-2013-2020/> (accessed 1 November 2018).

<sup>58</sup> Government Gazette (19 May 2017) no 40847 'Guidelines for the licensing of residential and day care facilities for people with mental disabilities and/or intellectual disabilities' available at [www.gpwonline.co.za](http://www.gpwonline.co.za) (accessed 3 June 2018).

<sup>59</sup> Government Gazette (n 58 above).

<sup>60</sup> As above.

<sup>61</sup> As above.

<sup>62</sup> As above.

<sup>63</sup> As above.

<sup>64</sup> As above.

<sup>65</sup> As above.

<sup>66</sup> As above.

Part of the right of access to healthcare services includes a right to make choices about healthcare.<sup>67</sup> The right of access to information allows a person to properly exercise their right to make choices.<sup>68</sup> This notion is supported in section 12(2) of the Constitution, which states that everyone has the right to bodily and psychological integrity.<sup>69</sup> The central pillar of the right to make choices is the concept of informed consent.<sup>70</sup>

## 5. Challenges

In terms of policies for assisting in the treatment of persons with mental health issues, the situation has improved in the last decade.<sup>71</sup> Several policies are now in place to take care of people with a mental health conditions.<sup>72</sup> However, policies alone are not enough, especially if they are not enforced and if there is no accountability.<sup>73</sup>

In South Africa, mental healthcare is under-funded and under-resourced and there are not enough trained mental health professionals.<sup>74</sup> In 2010, South Africa had 1,58 psychosocial providers for every 100 000 people.<sup>75</sup> In comparison, Argentina, in the same period had 13,19 psychosocial providers for every 100 000 people.<sup>76</sup> The WHO recommends that South Africa increases its psychosocial professionals by 2 937.<sup>77</sup> There is pressure on psychiatric hospitals to care for and manage mentally ill patients. Mental healthcare services in the public sector, however, are not accessible to the country's most vulnerable populations and the hospitals do not have enough trained mental health professionals, resulting in an extensive treatment gap.<sup>78</sup> About 75% of people with mental health illness do not have access to mental healthcare.<sup>79</sup> Contributing to the dilemma is the use of Western psychological models, which are not representative of the South African population and it is thus required that mental

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<sup>67</sup> As above.

<sup>68</sup> As above.

<sup>69</sup> As above.

<sup>70</sup> As above.

<sup>71</sup> Bezuidenhout (n 30 above).

<sup>72</sup> As above.

<sup>73</sup> As above.

<sup>74</sup> As above.

<sup>75</sup> As above.

<sup>76</sup> As above.

<sup>77</sup> As above.

<sup>78</sup> As above.

<sup>79</sup> As above.

health screening tools and treatment care models need to be developed for South Africa specifically.<sup>80</sup>

Overall, mental healthcare management and treatment are not integrated into other healthcare programmes; persons with mental health illnesses are often discriminated against and stigmatised, resulting in them not having access to the healthcare they require.<sup>81</sup> If they do obtain mental healthcare, they often fail to get the quality of care needed.<sup>82</sup> Mental healthcare management and services need to be made a priority and mental healthcare should be de-institutionalised so that community-based care can be implemented systematically.<sup>83</sup> Indicators to ensure the provision of quality mental healthcare management and services for South Africa should be developed, monitored and evaluated.<sup>84</sup> At a professional healthcare level, all service providers should be trained on managing mental health disorders.<sup>85</sup> At management level, managers must be trained in mental health management, care and treatment in order to ensure that mental healthcare is treated as an essential part of healthcare delivery.<sup>86</sup> Mental healthcare should be integrated into routine healthcare delivery.<sup>87</sup> It should be introduced into the wider curriculum for students and covered as routine care management for healthcare workers.<sup>88</sup>

## **6. Summary**

This chapter dealt with the effect of the Constitution and the impact of law and policies flowing from the Constitution to assist in maintaining dignity and reducing stigma for persons needing mental healthcare. The challenges in treating persons who need adequate mental healthcare have also been briefly discussed.

The following and final chapter of the dissertation contains conclusions and insights gained in this study. It includes recommendations that may in future be of value and assistance to mental healthcare professionals and policy makers.

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<sup>80</sup> As above.

<sup>81</sup> As above.

<sup>82</sup> As above.

<sup>83</sup> As above.

<sup>84</sup> As above.

<sup>85</sup> As above.

<sup>86</sup> As above.

<sup>87</sup> As above.

<sup>88</sup> As above.

## Chapter 6

### Conclusion and recommendations

*'No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were: any man's death diminishes me, because I am involved in mankind, and therefore never send to know to whom the bell tolls; it tolls for thee'.*

(John Donne, 1624)<sup>1</sup>

#### 1. Introduction

Most people will at some point in their lives face maladaptive behaviour or mental disorder in either themselves or in somebody else.<sup>2</sup> Mental health is important for personal and altruistic reasons, wanting to find one's share of happiness and living a meaningful and fulfilling life.<sup>3</sup> However, significant difficulties in coping with life problems may be experienced from time to time and in such periods psychological and related help may be required.<sup>4</sup> Such difficulties are not a disgrace and they can befall anyone if the stress is sufficiently severe.<sup>5</sup>

There is an increased realisation that mental disorders take an enormous toll on society and there is a shift, albeit slowly, towards investing in resources for its treatment.<sup>6</sup> Preventative measures on a primary, secondary and tertiary level are the most effective long-term approach to solving personal and group mental health problems.<sup>7</sup>

This chapter presents knowledge gathered from this study and attempts to answer the research questions posed in the introductory chapter. Finally, recommendations are made. These recommendations may not be comprehensive, and this author

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<sup>1</sup> 'MEDITATION XVII Devotions upon Emergent Occasions' John Donne available at <https://web.cs.dal.ca/~johnston/poetry/island.html> (accessed 14 November 2018).

<sup>2</sup> JC Coleman, JN Butcher & RC Carson (1984) *Abnormal psychology and modern life* 700.

<sup>3</sup> Coleman, Butcher & Carson (n 2 above) 700.

<sup>4</sup> As above 700.

<sup>5</sup> As above.

<sup>6</sup> As above.

<sup>7</sup> As above.

submits that implementation may be easier in theory than in practice. However, the intention is to effect some positive change.

## 2. Knowledge gathered, and insights gained through this research

Dignity is seen as the inherent value and worth of human beings and that it forms part of a person since birth.<sup>8</sup> Human dignity in itself is not dependent on office, social class and citizenship, ethnic heritage, religious affiliation, gender, race, sexual orientation, or of any other factor, except for the basic human capacities and dispositions required to be a rational and autonomous person.<sup>9</sup> Victor Frankl<sup>10</sup> remarked that although the possibilities to communicate with the outside world are inhibited by mental disease, the centre of the human being remains indestructible.<sup>11</sup> In recognising dignity as a human right, it legalises the notion that the essence of humanity must be agreed upon and respected in equal amounts.<sup>12</sup>

The stigma attached to mental illness is one of the most harmful obstacles to improved global mental health.<sup>13</sup> The belief that a person dealing with a mental disorder can pull themselves together gives rise to increased stigmatisation associated with mental disorders.<sup>14</sup> This stigma attached to mental disorders directly affects people with mental illness, their support systems, provider networks, and their community resources.<sup>15</sup> It is therefore important to understand stigma in order to reduce its negative impact on people undergoing psychological treatment.<sup>16</sup> Stigma lies at the core of affecting the mental well-being of persons, preventing them from dealing with mental illness by obtaining the care and support they require. It prevents

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<sup>8</sup> D Hicks 'What is the real meaning of dignity?' available at <https://www.psychologytoday.com/blog/dignity/201304/what-is-the-real-meaning-dignity-0> (accessed 9 October 2017).

<sup>9</sup> TE Hill 'Kantian perspectives on the rational basis of human dignity' in M Düwell, J Braarvig, R Bronsword & D Mieth (2014) *The Cambridge handbook of human dignity. Interdisciplinary perspectives* 216.

<sup>10</sup> 'Victor Emil Frankl' available at [https://en.wikipedia.org/wiki/Viktor\\_Frankl](https://en.wikipedia.org/wiki/Viktor_Frankl) (accessed 16 March 2018).

<sup>11</sup> T Shantall 'The existential theory of Viktor Frankl (1905 – 1998)' in W Meyer, C Moore & H Viljoen (2003) *Personology: From individual to ecosystem* 451.

<sup>12</sup> R Steinmann 'The core meaning of human dignity' available at [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812016000100023](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812016000100023) (accessed 22 August 2018).

<sup>13</sup> M Freeman 'Mental health and social change' in M Visser (ed) (2007) *Contextualizing community psychology in South Africa* 185.

<sup>14</sup> Staff Reporter (21 July 2017) 'Mental health: a serious issue in South Africa. Health and Wellness' available at <https://www.iol.co.za/lifestyle/health/mental-health-a-serious-issue-in-south-africa-10400056> (accessed 10 July 2018).

<sup>15</sup> PW Corrigan, BG Druss & DA Perlick 'The impact of mental health illness stigma on seeking and participating in mental healthcare' available at <https://www.ncbi.nlm.nih.gov/pubmed/26171956> (accessed 11 October 2017).

<sup>16</sup> Corrigan, Druss & Perlick (n 15 above).

them from being employed, accessing services and in many cases, enjoying the right to live outside of an institution.<sup>17</sup>

It is worth noting that approximately 450 million people globally present with diagnosable neuropsychiatric conditions, while many more endure misery and psychological difficulties.<sup>18</sup> South Africa shows prevalence rates of between 10% and 40% of mental or behavioural disorders.<sup>19</sup>

The increasing social awareness of modern mental healthcare professionals brought into focus the ethical questions about their roles as therapists and value models, and also as agents for maintaining the status quo, or for fostering social change.<sup>20</sup> Mental health professionals today are challenged to develop ethical standards and societal safeguards to prevent misuse of the techniques applied to change individual and group behaviour.<sup>21</sup> Counsellors are starting to realise that they are agents of community change as a key value of counselling where clients in the process are encouraged to better their circumstances and to fight injustice.<sup>22</sup> Increasingly, therapy refers not only to helping individuals to adjust to their personal situations, regardless of how frustrating or abnormal, it also focuses on alleviating group and societal conditions that may cause or maintain the maladaptive behaviour.<sup>23</sup>

Beauchamp and Childress<sup>24</sup> elucidated on the principles of medical ethics. They are *autonomy* (the right of an individual to make his own choice), *beneficence* (the principle of acting with the best interest of the other), *non-maleficence* (the principle that 'above all, do no harm') and *justice* (emphasising fairness and equality among individuals).<sup>25</sup> The values inherent in these principles resonate with society's moral norms, and their practical application in ethical decision making is clear.<sup>26</sup>

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<sup>17</sup> Freeman in Visser (n 13 above) 185.

<sup>18</sup> As above 178, 179.

<sup>19</sup> As above.

<sup>20</sup> A Perez (4 August 2017) 'Ethics vs morals vs law' available at <https://www.linkedin.com/pulse/ethics-vs-morals-law-dr-arturo-perez> (accessed 23 July 2018).

<sup>21</sup> Perez (n 20 above).

<sup>22</sup> LM Brammer and EL Shostrom (1982) *Therapeutic psychology. Fundamentals of counseling and psychotherapy* 18.

<sup>23</sup> Coleman, Butcher & Carson (n 2 above) 16.

<sup>24</sup> The Ethics Centre 'Big thinkers: Thomas Beauchamp & James Childress on medical ethics' available at <http://www.ethics.org.au/on-ethics/blog/august-2017/thomas-beauchamp-james-childress-medical-ethics> (accessed 17 August 2018).

<sup>25</sup> A Aldcroft (13 July 2012) 'Measuring the four principles of Beauchamp and Childress' available at <http://blogs.biomedcentral.com/bmcseriesblog/2012/07/13/measuring-the-four-principles-of-beauchamp-and-childress/> (accessed 12 August 2018).

<sup>26</sup> Aldcroft (n 25 above).

The principle of beneficence refers to acts of kindness, charity and altruism.<sup>27</sup> In a medical context beneficence means ensuring that the medical practitioner treats their patients well and that they do more than the bare minimum.<sup>28</sup> On an individual level, beneficence in healthcare expects the medical practitioner to be compassionate, empathetic and sensitive.<sup>29</sup> On a larger scale, beneficence can determine how a national health system approaches a problem such as, for instance, organ donation.<sup>30</sup> The manner in which resources are distributed will depend on the theory of justice to which a society subscribes.<sup>31</sup>

Morality governs private and personal interactions and it demands that people act from a sense of ethical duty.<sup>32</sup> Beauchamp and Childress's four principles (See section 2.4.4) - respect for autonomy, beneficence, non-maleficence and justice, are the cornerstone of this common morality.<sup>33</sup>

According to Coleman, *et al* it is difficult to attempt a formulation of universal values, but it would appear that certain tentative value assumptions as minimal essentials, are *inter alia*, 'belief in the worth of the individual and of human survival';<sup>34</sup> 'belief that personal growth and social progress are possible and worthwhile';<sup>35</sup> 'belief in equal justice and in the desirability of opportunities for all persons to fulfil their potentialities';<sup>36</sup> 'belief in the value of the "truth" that we try to approach by means of scientific inquiry';<sup>37</sup> 'belief in the maxim 'love one another' and other basic ethical tenets of the world's religious philosophies';<sup>38</sup> 'belief in the right and responsibility of all people to have a voice in decisions that will affect their lives';<sup>39</sup> 'belief in humankind as a functional part of the universe with potentialities for evolution that can be fulfilled';<sup>40</sup> and 'belief in the responsibility of all individuals for carrying forward

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<sup>27</sup> The Ethics Centre (n 24 above).

<sup>28</sup> As above.

<sup>29</sup> As above.

<sup>30</sup> As above.

<sup>31</sup> As above.

<sup>32</sup> Perez (n 20 above).

<sup>33</sup> The Ethics Centre (n 24 above).

<sup>34</sup> Coleman, Butcher & Carson (n 2 above) 698.

<sup>35</sup> As above.

<sup>36</sup> As above.

<sup>37</sup> As above.

<sup>38</sup> As above.

<sup>39</sup> As above.

<sup>40</sup> As above.

the progress made by preceding generations and for contributing to the creation of a good future for all'.<sup>41</sup>

Laws hold people accountable for harm they inflicted.<sup>42</sup> Law prescribes how human beings in an ordered society ought to behave and what should happen if they deviate from these prescribed legal norms.<sup>43</sup> The law establishes the system of justice as the authoritative system through which disputes are settled.<sup>44</sup> Law provides the mechanisms for society to function through tools such as written laws, and policing.<sup>45</sup> There exists a connection between law and morality since the law, too, is concerned with upholding standards in the same way as a sense of morality does.<sup>46</sup>

The ultimate source of law in South Africa is the Constitution<sup>47</sup> and it serves as the standard against which all law, and also conduct arising from such laws, are evaluated.<sup>48</sup> The Constitution provides for the three spheres of government (national, provincial and local), and the different states of power (legislative, judicial and executive) and it also provides for a range of government institutions that supports a constitutional democracy.<sup>49</sup> The author takes cognisance of the fact that courts, and especially the Constitutional Court, must decide cases on the basis of the values of human dignity, equality and freedom.<sup>50</sup> The Constitution of South Africa now refers to the 'inherent dignity' of all people and as such declares that respect for human dignity and all that flows from it is as a quality of life in itself and not a privilege granted by the state.<sup>51</sup>

Patients today are becoming less tolerant with withheld information, especially if a medical practitioner is unhelpful or recalcitrant in their replies.<sup>52</sup> Patients sue when they feel that they were not heard, their needs were not attended to, that nobody seemed to care and that as a result, a mistake or negligence (a negative outcome)

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<sup>42</sup> T Humby, L Kotzé & A Du Plessis (eds) (2016) *Introduction to law and legal skills in South Africa* 1.

<sup>43</sup> Humby, Kotzé & Du Plessis (eds) (n 42 above) 2.

<sup>44</sup> As above.

<sup>45</sup> As above.

<sup>46</sup> As above.

<sup>47</sup> The Constitution of the Republic of South Africa, 1996.

<sup>48</sup> Humby, Kotzé & Du Plessis (eds) (n 42 above) 125.

<sup>49</sup> As above 125.

<sup>50</sup> N Goolam 'Human Dignity – Our supreme constitutional *value*' *Potchefstroom Electronic Law Journal* available at <https://www.ajol.info/index.php/pelj/article/view%20File/43490/27025> (accessed 28 June 2018).

<sup>51</sup> Goolam (n 50 above).

<sup>52</sup> D Giesen (1988) *International medical malpractice law: A comparative study of civil liability arising from medical care* 688.

has resulted.<sup>53</sup> The burden of proof weighs heavier on the person alleging medical negligence against a medical practitioner.<sup>54</sup> The difference between medical negligence and medical error is well established and the principles are clearly outlined.<sup>55</sup> A medical practitioner can be held liable for medical negligence only if it can be proven that they are guilty of a failure that no medical practitioner with ordinary skills would have been guilty of if acting with reasonable care.<sup>56</sup>

### **3. Recommendations**

Based on my research findings, I make the following recommendations:

Community psychology may be used to address the presence of stigma attached to persons who deal with mental health issues.<sup>57</sup> Within a community psychology framework there are three critical principles of good practice that span different approaches: a sense of community should be developed; decision making should be participatory; and people should be empowered through the process of intervention.<sup>58</sup> The persons dealing with mental health problems and stigma, as well as their families should be directly involved in redressing the problem.<sup>59</sup> An intervener may be used to mobilise mentally ill people and/or their families into addressing the issue of stigma and discrimination.<sup>60</sup>

Short-term objectives for addressing stigma:

- Start a community campaign to educate the public about mental illness.<sup>61</sup> An evidence-based example is Mental Health First Aid where rural areas face challenges in accessing mental health services, including shortages of mental healthcare providers.<sup>62</sup> In such Mental Health First Aid courses rural community members are trained to recognise mental health problems and substance abuse issues and learn how to help a person developing a mental health issue or

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<sup>53</sup> BN Raveesh, RB Nayak & SF Kumbar (19 October 2016) Annals of Indian Academy of Neurology 'Preventing medico-legal issues in clinical practice' available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5109754/> (accessed 1 August 2018).

<sup>54</sup> Raveesh, Nayak & Kumbar (n 53 above).

<sup>55</sup> As above.

<sup>56</sup> As above.

<sup>57</sup> Freeman in Visser (n 13 above) 185.

<sup>58</sup> As above.

<sup>59</sup> As above.

<sup>60</sup> As above.

<sup>61</sup> Freeman in Visser (n 13 above) 185.

<sup>62</sup> Rural Health Information Hub 'Rural project examples: Mental health' available at <https://www.ruralhealthinfo.org/project-examples/topics/mental-health> (accessed 21 November 2018).

experiencing a mental health crisis.<sup>63</sup> Numerous studies of this method found that course participants are subsequently better able and more likely to help others with mental health issues.<sup>64</sup>

- Educate people in general to foster greater tolerance for people with mental illness.<sup>65</sup> An increasing number of celebrities are joining the conversation to talk about how mental illness affected their lives.<sup>66</sup> An example of this is the beloved Star Wars actress Carrie Fisher who brought the topic of mental health to the forefront.<sup>67</sup> Fisher was one of Hollywood's most outspoken personalities in terms of her mental health struggles. Recently her daughter, the actress Billie Lourd, quoted Fisher on Instagram saying 'If my life weren't funny then it would just be true and that is unacceptable'.<sup>68</sup> Exposing one's private struggles in a public space is not easy for individuals or their families.<sup>69</sup> However, when well-known individuals put a face to mental illness, it helps to raise awareness and it helps others living with similar challenges to realise that they are not alone.<sup>70</sup> The truth is that mental illness does not care what one looks like, what one does, how wealthy one is, or how happy one is before it enfolds a person.<sup>71</sup> As nowadays many celebrities are opening up about their own mental health battles, we can all benefit from learning more about mental illness and how to manage it.<sup>72</sup>
- Advise local businesses to employ people with mental disabilities as part of their quotas of employment of disabled people.<sup>73</sup>

Apply medium-term objectives as follows:

- Create an ongoing organisation operated by people with mental illness experience to take up issues concerning the mentally ill and to develop

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<sup>63</sup> Rural Health Information Hub (n 62 above).

<sup>64</sup> As above.

<sup>65</sup> Freeman in Visser (n 13 above) 185.

<sup>66</sup> Health Line Newsletter 'A mind of her own: 7 famous women helping to #endthestigma of mental illness' available at <https://www.healthline.com/health/mental-illness-celebrities#1> (accessed 21 November 2018).

<sup>67</sup> Health Line Newsletter (n 66 above).

<sup>68</sup> As above.

<sup>69</sup> As above.

<sup>70</sup> As above.

<sup>71</sup> As above.

<sup>72</sup> As above.

<sup>73</sup> Freeman in Visser (n 13 above) 185.

links with similar international organisations.<sup>74</sup> The National Alliance on Mental Illness (NAMI) is one of the largest grassroots mental health organisations in America dedicated to creating better lives for persons affected by mental illness.<sup>75</sup> This group started around a kitchen table and has now become one of the nation's 'trailblazing voices' on mental health.<sup>76</sup> NAMI consists of members of state organisations, local affiliates, and volunteers.<sup>77</sup> They provide education, host events, provide resources, and they work in the community to raise awareness and offer support to those who need it.<sup>78</sup> NAMI strives to change the way people view mental illness and to get rid of the associated stigma through education, advocacy, listening to the public, and providing leadership.<sup>79</sup> NAMI offers educational programs in thousands of communities to make sure that families, individuals, and educators get the support and information they require.<sup>80</sup> NAMI also has a toll-free helpline for free referrals, information, and support, as well as website forums for discussion and support groups.<sup>81</sup> Through the impact of their advocacy work, NAMI shapes national public policy for people with mental illness and their families.<sup>82</sup> NAMI's efforts have resulted in obtaining funding for research, protecting access to treatments and services, and making sure that mental illness is treated the same way as physical illness in most insurance plans.<sup>83</sup>

Apply longer-term objectives as follows:

- Galvanise the government towards improved legislation and rights for people with mental disability.<sup>84</sup> The National Mental Health Policy Framework and Strategic Plan (2013 - 2020) acknowledges that South

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<sup>74</sup> As above.

<sup>75</sup> D Stacey reviewed by S Gans (updated 12 October 2018) Verywellmind 'Leading mental health charities & organizations' available at <https://www.verywellmind.com/leading-mental-health-charities-and-organizations-4147842> (accessed 21 November 2018).

<sup>76</sup> Stacey (n 75 above).

<sup>77</sup> As above.

<sup>78</sup> As above.

<sup>79</sup> As above.

<sup>80</sup> As above.

<sup>81</sup> As above.

<sup>82</sup> As above.

<sup>83</sup> As above.

<sup>84</sup> Freeman in Visser (n 13 above) 185.

Africa faces challenges in the provision of mental healthcare services, *inter alia* a high prevalence of mental disorders linked to social determinants such as poverty, violence and substance abuse.<sup>85</sup> The policy acknowledges that mental healthcare continues to be underfunded and under-resourced compared to other healthcare sectors.<sup>86</sup> This policy takes cognisance of neuropsychiatric disorders being ranked only third in its contribution to the burden of disease in South Africa, after HIV and AIDS and other infectious diseases.<sup>87</sup> The policy outlines the current burden of mental disorders and cost before outlining national strategies addressing areas such as financing, advocacy and human rights.<sup>88</sup> It also includes sections on human resources, the role of district healthcare services and mental healthcare services for special populations.<sup>89</sup>

- For social policy to be effective, decision makers must consider the impact their policies will make on the community. This effectively makes perceived social impact a key factor in the development and implementation of social policies.<sup>90</sup>
- As promoted by the Mental Healthcare Act, community-based mental healthcare residential and day care services for treatment and rehabilitation must be established.<sup>91</sup> It must be ensured that healthcare providers in these facilities act in a manner that promotes the physical, spiritual, emotional and social well-being of mental healthcare users.<sup>92</sup> These services must aim to improve social competence through

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<sup>85</sup> Health-E News The South Africa health news service available at <https://www.health-e.org.za/2014/10/23/policy-national-mental-health-policy-framework-strategic-plan-2013-2020/> (accessed 24 November 2018).

<sup>86</sup> Health-E News (n 85 above).

<sup>87</sup> As above.

<sup>88</sup> As above.

<sup>89</sup> As above.

<sup>90</sup> 'The 4 factors that impact social policy' available at <https://publicadmin.usc.edu/blog/the-4-factors-that-impact-social-policy/> (accessed 24 November 2018).

<sup>91</sup> Government Gazette (19 May 2017) no 40847 'Guidelines for the licensing of residential and day care facilities for people with mental disabilities and/or intellectual disabilities'; available at [www.gpwonline.co.za](http://www.gpwonline.co.za) (accessed 3 June 2018).

<sup>92</sup> Government Gazette (n 91 above).

enhancing the social skills, psychological and occupational functioning of the people attending these facilities.<sup>93</sup>

Persons working in helping professions must strive to assist in providing resources and skills to patients that will enable them to help themselves.<sup>94</sup> In this instance the impact of positive psychology must be given more attention.<sup>95</sup> Positive psychology therapy programmes include interventions such as encouraging the use of strengths like forgiveness and gratitude to foster the engaged life, and to enhance relationships with families and institutions to promote a meaningful life.<sup>96</sup> The goal must always be to help people to function in everyday life, leading a normal life.<sup>97</sup>

Mental healthcare recipients should have an input and become participants in defining ethical behaviour.<sup>98</sup> They should be able to examine whose interests are served by mental healthcare interventions.<sup>99</sup> While academic research matters, it would be erroneous to suggest decision makers do not consider the will of the people when developing and implementing social policy.<sup>100</sup> Individuals and advocacy groups, such as non-profit human service organisations, should voice their views to shape social policy.<sup>101</sup>

Mental healthcare users must be allowed access to all applicable information pertaining to their mental or psychological treatment as this forms part of the person's right to make proper choices and therefore the right to informed consent.<sup>102</sup>

Effort must be made not to subscribe Western psychological models only as they are not representative of the South African population.<sup>103</sup> Specific mental health screening tools and treatment care models for non-Western individuals need to be

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<sup>93</sup> As above.

<sup>94</sup> Brammer & Shostrom (n 22 above) Preface xi.

<sup>95</sup> A Carr (2011) *Positive psychology. The science of happiness and human strengths* 40.

<sup>96</sup> Carr (n 95 above).

<sup>97</sup> S Galderisi, A Heinz, M Kastrup, J Beezhold, & N Sartorius *World Psychiatry* (4 June 2015) 'Toward a new definition of mental health' available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471980/> (accessed 20 September 2018).

<sup>98</sup> G Viljoen & L Eskell-Blokland 'Critical approaches in community psychology' in M Visser (ed) (2007) *Contextualising community psychology in South Africa* 57.

<sup>99</sup> Viljoen & Eskell-Blokland in Visser (n 98 above) 57.

<sup>100</sup> The 4 factors that impact social policy (n 90 above).

<sup>101</sup> As above.

<sup>102</sup> Government Gazette (n 91 above).

<sup>103</sup> J Bezuidenhout 'Why South Africa is failing mental health patients and what can be done about it' available at [theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445](http://theconversation.com/why-south-africa-is-failing-mental-health-patients-and-what-can-be-done-about-it-66445) (accessed 13 April 2018).

developed.<sup>104</sup> Most psychological phenomena are intrinsically culture bound whereas psychological theories developed in one culture may not automatically be generalised or applicable to the behaviour of people of another culture.<sup>105</sup> As psychology as a science primarily developed in Europe and America, based on the behavioural data of Western people, this limits the applicability of psychology in developing countries.<sup>106</sup> This, however, does not imply that there should be as many psychologies as there are cultures.<sup>107</sup> Valid psychological intervention will be applied by identifying what is culturally relevant in main stream psychology and by adopting new concepts of general applicability from other cultures.<sup>108</sup>

The courts must be the enforcers of the values underpinned by the Constitution, and in the process consider the Bill of Rights, which is a cornerstone of democracy in South Africa.<sup>109</sup>

The judiciary must foster a human rights culture.<sup>110</sup> It must demonstrate tolerance towards social issues that gives superiority to the individual and personal freedom.<sup>111</sup>

The views of organisations such as the South African Depression and Anxiety Group (SADAG), the Psychological Society of South Africa (PsySSA) and the South African Federation for Mental Health (SAFMH) must be considered and respected in the treatment of persons needing psychological healthcare.<sup>112</sup>

Mental healthcare should be integrated into routine healthcare delivery.<sup>113</sup>

Indicators to ensure the provision of quality mental healthcare management and services for South Africa should be developed, monitored and evaluated.<sup>114</sup> It is recommended that a generic set of quality indicators be developed for primary mental healthcare services that reflect a multi-stakeholder perspective, and that is

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<sup>104</sup> Bezuidenhout (n 103 above).

<sup>105</sup> A Hiroshi (Published online 27 Sep 2007) *International Journal of Psychology* Volume 19 1984 Issue 1 – 4 Pages 45-55 'Psychology in a non-Western country' available at <https://www.tandfonline.com/doi/abs/10.1080/00207598408247514> (accessed 24 November 2018).

<sup>106</sup> Hiroshi (n 105 above).

<sup>107</sup> As above.

<sup>108</sup> As above.

<sup>109</sup> C Botha (2015) *Statutory interpretation: An introduction for students* 102.

<sup>110</sup> Botha (n 109 above) 201, 202.

<sup>111</sup> D Kleyn & F Viljoen (2014) *Beginner's guide for law students* 245.

<sup>112</sup> Bezuidenhout (n 103 above).

<sup>113</sup> As above.

<sup>114</sup> As above.

used to bring about quality improvement.<sup>115</sup> A National Service Framework and strategy for mental healthcare has only recently been developed in England.<sup>116</sup> In the past, the decision of if and how mental healthcare should be subjected to quality assessment were interpreted and implemented by healthcare providers active in different localities.<sup>117</sup> Efforts towards establishing a standardised and generic system of quality measurement in mental healthcare in England began in the 1990s when the Clinical Standards Advisory Group focused on the management of schizophrenia and depression and, with the latter, moved towards examining the quality of primary and secondary care provision.<sup>118</sup> The National Service Framework for Mental Health which absorbed the role of primary care in mental healthcare provision followed.<sup>119</sup>

The Mental Healthcare Act and the principles it stands for as set out by the WHO must be applied consistently.<sup>120</sup> The expressly-stated orientation towards a patient-centred approach to psychiatric care must be implemented and respected.<sup>121</sup> It must be ensured that mental healthcare users are treated in the least restrictive manner possible and with the least discomfort and inconvenience.<sup>122</sup>

The National Mental Health Policy Framework and Strategic Plan's (2013 – 2020) indication that mental health *per se* in South Africa continues to be under-funded and under-resourced must be taken seriously and steps must be taken to alleviate this problem.<sup>123</sup>

#### **4. Afterword**

This dissertation asks a fair question: What does this all mean? The message, hopefully, is optimistic. As the importance of maintaining dignity and reducing stigma for people living with mental health issues is progressively realised, steps can be taken to ensure that it is practically implemented. By adhering to the principles as

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<sup>115</sup> T Shield, S Campbell, A Rogers, A Worrall, C Chew-Graham & L Gask *Journal of Medical Ethics* 'Quality indicators for primary care mental health services' available at <https://qualitysafety.bmj.com/content/12/2/100> (accessed 24 November 2018).

<sup>116</sup> Shield, Campbell, Rogers, Worrall, Chew-Graham & Gask (n 115 above).

<sup>117</sup> As above.

<sup>118</sup> As above.

<sup>119</sup> As above.

<sup>120</sup> CP Szabo & SZ Kaliski 'Mental health and the law: a South African perspective' available at <https://www.nvbi.nlm.nih.gov/pmc/articles/PMC5618994/> (accessed 10 July 2018).

<sup>121</sup> Szabo & Kaliski (n 120 above).

<sup>122</sup> As above.

<sup>123</sup> Government Gazette (n 91 above).

set out in the Constitution, as well as to policies flowing from it, there is hope for the future in effecting the required changes to address the issues discussed in this dissertation. From a scientific and scholastic point of view, there is a field full of possibilities for future research.

There are vast opportunities on all levels, from grassroots to government, law and policy-making to modify the old and bring in the new.

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