NOTE: Read the exam and the following instructions carefully.

1. This is an open book examination. You may bring your course materials, relevant statutes, your CANS and notes into the examination room. You may bring a pocket Criminal Code. Use of library books or other texts is prohibited during the examination.

2. You may cite all cases and articles/texts from the course materials in short form (e.g., McCorkell or Kaiser, chapter 1 etc.) as long as the reference is clear.

3. If you are handwriting your exam please write on every other line and use blue or black ink only.

4. This exam has two parts. Part A is a problem with several parts. Everyone must answer ALL parts of this problem. Each sub question assumes additional facts which should not be applied to previous sub questions. Part B is an essay with three choices. Everyone must answer ONE of these essay questions.

   THIS EXAMINATION CONSISTS OF PARTS A AND B
PART A: PROBLEM

Cheryl Barlow is a young woman with a substantial criminal and psychiatric history. She began displaying behavioural difficulties in her childhood, including fighting and lying. She ran away from home twice, including one occasion where she was brought home by police officers. She was diagnosed with a moderate conduct disorder when she was twelve, after her doctor referred her to a child psychologist. Cheryl’s mother, Tiffany, was a single parent and was overwhelmed caring for her while working more than full time in order to support them, and frequently relied on Cheryl’s grandfather Larry for childcare. Cheryl was very close to him, and when his health began declining, her acting out escalated, and she began drinking and experimenting with drugs.

Cheryl became involved in the youth criminal justice system in her early teenage years, first charged with assault and disturbance in a public place at age thirteen. After repeatedly abandoning diversion before completion and ultimately breaching a condition of a probationary order and later failing to appear in court, she was deemed a risk of not appearing in court and was remanded (detained) in a youth correctional facility although the Crown wound up dropping those charges, and Cheryl returned home.

After Cheryl turned sixteen, she had her first of several psychiatric admissions to hospital. By age twenty-one, Cheryl had developed chronic mental illness, exacerbated by drug abuse including cocaine, crystal methamphetamine, and marijuana. Cheryl’s various physician assessors indicated the following possible diagnoses: adjustment disorder, attention deficit hyperactivity disorder, narcissistic personality traits, oppositional and defiant behaviour and borderline personality traits. Cheryl has cycled between prisons and psychiatric hospitals since she was 16. She has now accumulated more than 20 criminal convictions on her record, some from offences in institutions, and mostly for property-related offences.

At the age of 24, Cheryl was arrested for arson after setting fire to the mailroom in her mother’s apartment building as a result of an ongoing dispute with the landlord. The fire was quickly put out and no one was injured. She was found fit to stand trial and sentenced to 10 months in a provincial jail. She served the entire sentence because assessments completed while she was in jail indicated that she was still suffering from a mental illness and was likely to offend again in the future if released. Cheryl had tried various medications over the years, including during this 10 month stint in jail, but nothing seemed to control her behaviour. One week before her release date, prison officials discussed their concern about releasing her in her current mental state.
Law 383, Section 1

1. 10 marks (18 minutes) You are a lawyer consulted by prison officials. What options does the prison have if it does not want to release Cheryl into the community? Be specific in your answer and refer to relevant statutory provisions in the Mental Health Act.

2. 15 marks (27 minutes) Assume that Cheryl is now 27 and has been civilly committed in a provincial mental health facility for over a year and a half. She has been treated without consent with various antipsychotic and antidepressant medications but none have helped significantly. There are no discharge plans in place for Cheryl as doctors are not sure if she will ever be able to live in a community setting until she has shown a positive response to medication. Despite the psychiatric treatment, she still demonstrates defiant behaviour and continues to deny that she has a mental illness. She has retained you as her lawyer. Reviewing the progress notes you determine that she is virtually in the same position she was prior to admission. She is very eager to leave the facility so that she can live her own life. At a minimum, she is very eager to stop the treatment which makes her feel miserable. What are her options for release and, failing that, is there any way she can stop the treatment? How would you advise her as to her options and how she should proceed?

3. 10 marks (18 minutes) Assume that a review panel has been scheduled for Cheryl and she has hired you to represent her. Cheryl is excited because her mother Tiffany has told Cheryl that she can return home to live with Tiffany. However just before the panel begins, Tiffany approaches you saying that she has done a lot of soul-searching and she cannot have Cheryl come to live with her. She believes that Cheryl should continue to stay in the hospital as long as possible because she is scared that Cheryl would deteriorate further if released. She is afraid that if she tells the review panel this in front of Cheryl, Cheryl will deteriorate even further and that their relationship will be damaged irreparably. She informs you that she has communicated this to Cheryl’s doctors. She is also concerned that Cheryl could escalate her criminal behaviour to violence if released. You have determined that your client is volatile and deeply invested in being released to her mother’s care. This is your first review panel and you are struggling with the various ethical and procedural issues. What issues are you likely to face in the review panel hearing regarding Tiffany’s testimony specifically? What are your ethical responsibilities to Cheryl in this situation?

4. 15 marks (27 minutes) Assume for the purposes of this question that Cheryl has been released and is living in the community at her mother Tiffany’s home. Her grandfather Larry has been diagnosed with Alzheimer’s, and has been living with Cheryl and Tiffany. Cheryl has been doing fairly well, but is struggling under all the stress she is experiencing caring for Larry as her mother works. One stormy night, Cheryl’s mother Tiffany was distracted when driving home from work, and had a terrible collision with another vehicle. She has been hospitalized with a brain injury. The injury has changed Tiffany’s behaviour – she has become angry and strikes out repeatedly at staff. One evening while a staff member, Anna, was trying to help her with dinner, Tiffany swore at her and swung her arm under her dinner tray and pushed it violently towards Anna’s face. The cup of hot coffee on the tray burned Anna’s face severely and police were called to deal with the matter. Tiffany was charged with assault causing bodily harm. You are
defence counsel for Tiffany. When you go to interview Tiffany, you discover that she has had a stroke since the assault took place and has suffered more brain damage. While she is still verbal, she is unable to have a coherent conversation. You are not sure whether she is understanding any of the information you are trying to provide her. What is likely to happen if the Crown proceeds with these charges? Please present all options and give your opinion on the likely outcome.

5. (Parts (a) and (b) are worth a total of 25 marks) (45 minutes) Assume for the purposes of this question that Cheryl is living with her grandfather Larry (at her mother’s home), and her mother is still in the hospital. Larry’s Alzheimer’s disease has progressed such that Cheryl is no longer able to take care of her own mental health needs while acting as his primary caregiver, and visiting her mother for support in the hospital. Cheryl believes he needs to move into a nursing home where his daily needs could be looked after by trained professionals, but Larry does not want to go. They would need to sell his condo before they could afford the care home Cheryl has in mind. Cheryl is uncertain about whether Larry really understands what she is suggesting. Larry keeps forgetting their discussions about the issue, and his general cognition is rapidly declining. You are a lawyer, and Cheryl has approached you for advice about all of this. You are aware of Cheryl’s psychiatric history and, while she claims her mood has been stable, she has confessed to you that on a few occasions she has resorted to street drugs to alleviate the stress she has been experiencing with these matters.

(a) (20 marks) What are the options for dealing with Larry’s finances and his future care? Your answer should specifically address selling the condo and moving Larry to the nursing home.

(b) (5 marks) Would your answer be any different if Larry had an existing representation agreement appointing Cheryl as his representative. Why or why not? Be specific in your answer and refer to specific legislative provisions. If you would need further information to answer this question, explain what that information is and why you need it to answer the question.

**PART B: ESSAY QUESTIONS**

Students must answer ONE of the following three essay questions.

This question is worth 25 marks (45 minutes)

1. In his article in your materials, Gerald Robertson makes the following statement:

   The concept of fear of mental disability and fear of people with mental disability manifests itself in many different ways. Society has discriminated, has isolated, has segregated the mentally disabled through fear. One should not be led to believe that in all this the law has performed a neutral role. The law has taken an active role in achieving those social objectives. It has been an instrument of social policy, whereby social attitudes towards mental disability have been implemented and reflected.
Law 383, Section 1

Do you agree with Professor Robertson that fear has been a driving force in developing the law that responds to people with mental disabilities? Using examples drawn from both the civil and the forensic mental health systems, refute or support Robertson’s position.

2. The Health Care Consent and Care Facilities Admissions Act and The Representation Agreement Act take an approach to health care consent that favours autonomy of the individual and supported decision-making to maximize an individual’s ability to participate in health care decision-making. Is this approach consistent with that taken to those experiencing serious mental illnesses in British Columbia under the Mental Health Act? Your answer should briefly set out the approach taken by both legislative regimes, explore their (in)consistencies and discuss the justification for treating these contexts either the same or differently. You may refer to materials in the readings as well as the two hearings in which you participated and the film “Out Of Mind Out Of Sight”.

3. In McCorkell v Riverview Hospital, Donald J made the following observation about the relevance of the analogy between criminal law and civil commitment:

   It is necessary at this point to repeat what I said earlier concerning the use of criminal cases to decide a mental health matter: the objects and purposes of the criminal law and mental health legislation are so different that cases in one area will be of little guidance in the other. A protective statute and a penal statute operate in dramatically dissimilar contexts. Strict and narrow criteria for the detention of persons in a criminal law context reflect our society’s notions of fundamental justice for an accused person and protection of the public is a foremost consideration. But in the field of mental health, the same criteria would defeat the purpose of the legislation which is to help seriously mentally ill people in need of protection.

As you know Donald J used this analysis to support his decision upholding the civil commitment standards in British Columbia. To what extent is this reasoning a legitimate way to distinguish civil mental health law from forensic mental health law? Given what you know about both systems, and the interaction between them, is this a valid distinction? Your answer should include examples from the course that either support Justice Donald’s position or undermine it. You may refer to materials in the readings, the two hearings in which you participated and the film “Out Of Mind Out Of Sight”.

END OF EXAMINATION