

## Fast Facts on the BC *Mental Health Act*

The *Mental Health Act* is one of the main laws in BC that governs mental health and substance use health care. It sets out when you can be admitted to hospital and treated for what the *Act* calls a “mental disorder”, either because you ask for that care or because you are being detained and involuntarily treated. This law impacts people diagnosed with mental illness, brain injuries, dementia, substance use related health issues, and many other disability or health conditions.

There is growing evidence that the *Mental Health Act* is not serving BC well. Emerging investigations from independent offices and compelling stories from people with experience of the mental health system and the loved ones who support them all point to the same thing. BC needs an independent review of the *Mental Health Act* to create reforms that respect human rights, promote evidence-based care, and build in oversight from an independent provincial Mental Health Advocate.

### The *Mental Health Act* is Based in Outdated Stigma and Stereotypes

- The *Mental Health Act* was passed in 1964 and many portions of it still remain the same today. The last time the law was substantively amended was 1998.
- The *Mental Health Act* still treats mental health issues as moral failings that can be disciplined out of people. For example, section 32 of the *Mental Health Act* states that every patient is “**during detention, subject to the direction and discipline**” of the facility staff. This means that patients can be solitarily confined in seclusion rooms, mechanically restrained with straps that tie them to their beds, or otherwise punished during their time in hospital. There are no limits on when, how, or why someone can be subject to these restraints and no review.
- In its January 2021 investigation into the *Mental Health Act*, the Representative for Children and Youth observed that there should be strict limits on the use of restraints – “**To permit the unregulated use of restraint and confinement of patients, and specifically of children, is unacceptable.**”<sup>i</sup>

### Overreliance on Involuntary Services and Diminishing Voluntary Services

- People in BC often cannot get access to mental health and substance use services when they ask for help, while at the same time there have been significant increases in the rates of involuntary treatment. The way the *Mental Health Act* is structured and used makes involuntary treatment a primary way to provide care. This becomes a reinforcing negative cycle. If people can’t get services when they ask for help, their health may worsen until they are in a crisis. And detention and involuntary treatment itself can create negative or traumatizing experiences that alienate people from services in the future.

- The criteria for involuntary admission and treatment in the *Mental Health Act* were expanded in 1998 and the procedural safeguards were reduced. After those amendments, the rates of detention have increased dramatically, but the Act has never been evaluated since that time.
  - The Ombudsperson documented that **rates of detention under the *Mental Health Act* increased by 71%** between 2005/06 and 2016/17, while the rates of voluntary admission have stagnated and decreased per capita.<sup>ii</sup>
  - The Representative for Children and Youth documented **detentions of children and youth under the *Mental Health Act* increased by 162%** between 2008/09 and 2017/18.<sup>iii</sup>
  - BC now has the highest rate of hospitalization due to mental illness and substance use in Canada.<sup>iv</sup>

## The *Mental Health Act* Removes Health Care Consent Rights and Excludes Families

- When we access health care, the law protects our right to make our own health care consent decisions. If we are incapable of understanding and making a health care decision, the law protects our right to have the people who know us best make the decision, like our families. **But the *Mental Health Act* removes health care consent rights for involuntary patients.** All involuntary patients can be administered any form of psychiatric treatment the facility chooses without consent. That means involuntary patients aren't assessed to see whether they are capable of making decisions and families and supporters are excluded from decision-making on behalf of their loved ones. This does not happen for physical health care; if someone is incapable of making physical treatment decisions, the people they trust and know them best act as substitute decision-makers.
- The *Mental Health Act* was recently criticized for **non-compliance with the United Nations Convention on the Rights of Persons with Disabilities** by the Special Rapporteur following an inspection of Canada, who found that "the *Mental Health Act* of British Columbia contains very broad criteria for involuntary admissions and, once detained, a person can be forcibly treated without their free and informed consent, including forced medication and electroconvulsive therapy".<sup>v</sup>

## The Mental Health and Substance Use Care System Needs Independent Oversight

- In 1998 the BC government created a provincial Mental Health Advocate after findings from the Ombudsperson's office of a "significant gap in advocacy" for mental health patients.<sup>vi</sup> However, **the BC Mental Health Advocate office was abolished in 2001** following an election, despite an external evaluation that concluded the office should be retained.<sup>vii</sup>
- **Independent offices have documented widespread non-compliance** with basic legal requirements and fundamental human rights in BC's mental health and substance use care system. For example, the Ombudsperson's 2019 investigation found that detaining facilities completed the basic legal requirements when detaining someone under the *Mental Health Act* only 28% of the time.<sup>viii</sup> The Representative for Children and Youth found numerous examples of children and youth who had not been informed of their legal rights.<sup>ix</sup> These

one-time investigations speak to the need for ongoing, built-in, independent oversight, for example, from a provincial Mental Health Advocate.

- Other Canadian jurisdictions have enshrined provincial Mental Health Advocates in their mental health legislation<sup>x</sup> or have hired former judges and independent investigators to conduct reviews of their mental health legislation to ensure their laws are regularly evaluated and improved.<sup>xi</sup>

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<sup>i</sup> Office of the Representative for Children and Youth, “Detained: Rights of Children and Youth under the *Mental Health Act*” (January 2021) [Detained: Rights of Children and Youth under the *Mental Health Act*] at 59.

<sup>ii</sup> Office of the Ombudsperson, “Committed to Change: Protecting the Rights of Involuntary Patients under the *Mental Health Act*”, Special Report No. 42 (March 2019) [Committed to Change] at 15.

<sup>iii</sup> Detained: Rights of Children and Youth under the *Mental Health Act* at 5 and 29.

<sup>iv</sup> British Columbia Ministry of Mental Health and Addictions, “A Pathway to Hope: A roadmap for making mental health and addictions care better for people in British Columbia” (June 26, 2019), p. 5.

<sup>v</sup> End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada (April 12, 2019).

<sup>vi</sup> Office of the Ombudsperson, “Listening: A Review of Riverview Hospital”, Public Report No. 33 (May 1994) at 10-1.

<sup>vii</sup> Report of the Evaluation of the Role of the Mental Health Advocate for British Columbia, by Dr. Nick Poushinsky (December 28, 1999) at 8.

<sup>viii</sup> Committed to Change at 7.

<sup>ix</sup> Detained: Rights of Children and Youth under the *Mental Health Act* at 47.

<sup>x</sup> For example, Alberta established the Mental Health Patient Advocate in 1990 under the Alberta *Mental Health Act*: <https://www.alberta.ca/alberta-mental-health-patient-advocate.aspx>.

<sup>xi</sup> For example, Nova Scotia engaged a former Supreme Court of Canada judge to conduct an independent report, Minister of Health and Wellness, “Report of the Independent Panel to Review the Involuntary Psychiatric Treatment Act and Community Treatment Orders”, by Gérard V. La Forest and William Lahey (July, 10, 2013) and Ontario engaged with an independent agency to review amended mental health legislation with Ontario Ministry of Health and Long-Term Care, “The Legislated Review of Community Treatment Orders”, prepared by R.A. Malatest & Associates (May 23, 2012).