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BRITISH COLUMBIA SCHIZOPHRENIA SOCIETY
BC SCHIZOPHRENIA SOCIETY FOUNDATION
SUPPORTING THE BC SCHIZOPHRENIA SOCIETY

October 16, 2018

Honourable David Eby
Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Attorney General Eby:

The British Columbia Schizophrenia Society (BCSS) wishes to thank the Government, you and your staff for the defence of the *Mental Health Act*, *Representation Agreement Act* and *Health Care (Consent) and Care Facilities (Admission) Act* in the *Charter* challenge in *MacLaren v. British Columbia (Attorney General).* The Honourable Chief Justice Hinkson agreed with the Attorney General's position and found that the Council of Canadians with Disabilities did not have standing to pursue the case.

We are aware that this judgement did not test the merits of the case which may be raised in the future. We therefore wish to reiterate why BCSS members, most of whom have had direct involvement with the devastation caused by untreated psychotic illnesses, support the current *Mental Health Act* and strongly disagree with the proposed changes. The plaintiff's *Charter* challenge was supported by the Community Legal Assistance Society (CLAS), which continues to promote these positions which we firmly oppose.

The CLAS position would give involuntarily admitted patients the right to refuse the very treatment they need to regain their health and recover sufficiently to be discharged from involuntary detention. Treatment refusal is known to have devastating consequences for the refusing patient, other patients, families, staff, and funding agencies.

The CLAS position of allowing treatment refusal is also contrary to the purpose of the *Mental Health Act* enunciated by Justice Donald in *McCorkell.* "The purpose of the Act is manifestly plain: the treatment of the mentally disordered who need protection and care in a provincial psychiatric hospital…The *Mental Health Act* <u>involuntarily detains people only for the purpose of treatment</u>; the punitive element is wholly absent"(emphasis added).

In addition, if treatment is refused the director of the psychiatric facility cannot fulfil his or her legislated duties: "The director must ensure (a) that each patient admitted to the designated facility is provided with professional service, care and treatment appropriate to the patient's condition and appropriate to the function of the designated facility and, for those purposes, a director may sign consent to treatment forms for a patient detained …" (Reference is to Form 5, which requires the treatment capability of each involuntary patient to be assessed after information about the proposed treatment has been provided.) A right to refuse treatment thwarts the purpose of the Act.

The effects of CLAS positions can be clearly seen in Ontario. In one of many cases detailed in "Treatment Delayed-Liberty Denied" in the *Canadian Bar Review* (*attached*), Mr. Sevels made an advance directive not to be treated if he became incapable. In hospital, his symptoms worsened. He became incapable and psychiatrists recommended to the substitute decision maker, who happened to be the Public Guardian and Trustee, that Mr. Sevels be given treatment that had been previously effective for him. The substitute decision maker refused to consent because substitute decision makers under Ontario law (which CLAS wants to prevail here in B.C.) *are required to follow the patient's directive to not receive treatment.* The result was that the staff had no alternative but to keep Mr. Sevels in seclusion (isolation) for over 13 months! Even a judge could not overturn the refusal, although he commented that the *Charter* surely could not have been intended to sanction such situations. Mr. Sevels was left untreated for over 5 years. He was treated only after he attacked and seriously injured a nurse. He responded well to treatment, and was discharged to the community. Even setting aside the argument for timely, humane care, the cost of hospitalization for untreated patients due to the unnecessary length of stay and extra staffing is a significant issue for funding bodies.

Mr. Sevels, in an untreated state, seriously injuring a nurse, is not an unusual occurrence. Nurses' professional associations, nurses unions, and Work Safe organizations are all concerned about assaults on nurses. Studies show that *untreated* involuntary patients have a much higher rate of assault on nurses, other patients, staff and visitors than appropriately treated patients. When involuntary patients refuse treatment, staff are forced to become jailors. Ethical issues abound. BCSS is very concerned about the safety of staff. An added worry is that, if our loved one in an untreated psychotic state assaults a nurse, they may end up in jail or in the forensic system.

Another issue in the MacLaren case and advocated for by CLAS is the following: If a patient is incapable of making a treatment decision, consent should be a matter for a substitute decision maker, usually family and not by a professional like in Saskatchewan, Newfoundland, Quebec and here in BC. BCSS members appreciate our *Mental Health Act* because it provides treatment to distressed patients in a timely manner on admission, whereas it may take days to find a patient's substitute decision maker—who may also refuse treatment, resulting in more stress and greater harm to the patient.

While family members want to be involved in providing information to the treatment team, they do not have the medical knowledge of a treating professional, and so prefer the current Act. Having to consent to treatment that your loved one suffering from psychosis vehemently refuses, can fracture family relationships. This can be catastrophic for many patients who are dependent on their families.

Thank you for the Government's support of the current Mental Health Act.

Dave Halikowski	Thomas E. Conway
President, Board of Directors	Executive Director

cc: The Honourable Adrian Dix, Minister of Health
The Honourable Judy Darcy, Minister of Mental Health and Addictions