

# Understanding the Charter Challenge and BCSS's Position

## **Q1: What is the Charter challenge against the BC Mental Health Act about?**

The British Columbia (BC) Mental Health Act Charter Challenge is a legal case – beginning May 29, 2025 – that focuses on whether certain parts of BC's Mental Health Act violate the Canadian Charter of Rights and Freedoms. The Council of Canadians with Disabilities (CCD) argues the BC Mental Act violates the Canadian Charter of Rights and Freedoms by not allowing involuntary psychiatric patients the right to refuse treatment. If this challenge is successful, the BC government will have to change the law to allow some involuntary patients<sup>1</sup> the legal right to refuse psychiatric treatment but stay detained.

## **Q2: What will happen if the Charter Challenge is successful?**

If the court ultimately agrees with the CCD, the BC Government will have to change the Mental Health Act, which may involve:

- Some involuntary patients being able to refuse the very treatment they need for their recovery and release.
- Patients on extended leave who are stabilized because they must take their medication could stop treatment and become ill again and be at risk of harm to self or others and/or rehospitalization.
- Families being forced to make treatment decisions which their loved one does not want, instead of the director of the psychiatric facility, which could create tension between the patient and their family who often provide vital support.

## **Q3: What is the B.C. Schizophrenia Society (BCSS) position on the Charter Challenge?**

BCSS supports the current Mental Health Act, and the BC government's defence of it. BCSS believes the Act protects patients, families, healthcare staff, and the public by:

- Ensuring that patients who need treatment receive it, even if they are too ill to recognize and understand their condition.
- Preventing longer hospital stays, use of restraints, and needless suffering when treatment is refused.
- Avoiding situations like those in Ontario, where patients can legally refuse treatment.

**Q4: How does treatment consent work under the current law?**

Using Form 5 of the BC Mental Health Act. If the patient shows an understanding of the effects of the treatment (not necessarily an appreciation), the patient can sign the form consenting to their treatment.

But if they do not consent to their own treatment, it is because they are "incapable of appreciating the nature of treatment and/or their need for it, and is therefore incapable of giving consent," the director then is authorized to sign the consent to treatment on the advice of the treating physician.

At least two clinicians must certify that the person "requires treatment" in deciding to admit someone involuntarily. It is a serious decision and is made with proper safeguards in place.

**Q5: If the Charter Challenge were successful, how would families in BC be impacted?**

If the BC Mental Health Law is changed, families could be required to consent to or refuse treatment on behalf of a loved one. It is important that caring family members are involved in the 'circle of care' and have the option to provide input into their loved one's treatment planning. However, families often do not want the responsibility of overriding a loved one's refusal of treatment and the burden of having a legal responsibility for specific treatment decisions, since it can result in emotionally difficult patient-family situations. The current system protects families from that burden. If the hospital cannot treat someone who is not physically dangerous, they are likely to discharge the person prematurely in a psychotic state and the family will have to cope.

**Q6: Why can a voluntary patient choose to be treated, but some involuntary patients cannot refuse treatment?**

Involuntary and voluntary patients are very different. Voluntary patients are admitted with their own consent and can discharge themselves at any time. Involuntary patients are admitted without their consent because, without treatment, they are likely to harm themselves and/or others or significantly deteriorate. If treatment is refused, they cannot be discharged like a voluntary patient.

**Q7: Does the current law provide for the protection of rights?**

Yes. Involuntary patients in BC are provided with rights information upon admission, and they also receive rights advice from an independent agency. In addition, they have the right to a review panel for a second opinion, plus access to the courts.

**Q8: Is the Charter Challenge only focused on legal rights?**

No. While the current court case is based on the Charter of Rights and Freedoms, it also raises important questions about how we support BC citizens with severe mental illnesses who need treatment to regain their health and stay well. In jurisdictions where involuntary patients are legally allowed to refuse treatment, they are subjected to longer periods of detention, which can result in prolonged suffering, being physically restrained and/or being put in seclusion. Involuntary patients due to their nature of their illness (for example, delusions and hallucinations) may also harm nurses and fellow patients and must be physically restrained and/or be put in seclusion. This case is about balancing individual rights, safety (for the individual and the safety of others) and access to care.

**Q9: How could the Charter challenge affect public safety?**

If the BC government loses this case and the law is changed to allow treatment refusal, patients whose illness is stable due to medication could stop their treatment, become unwell again, and possibly pose a danger to themselves or others. It could lead to increased homelessness, police involvement, and longer hospital stays. In addition, patients detained in hospital who are allowed to refuse treatment have been shown to injure more nurses and fellow patients than patients receiving treatment.

**Q10: Is BC's system unusual?**

No. BC law is similar to systems used in other provinces, such as Saskatchewan and Newfoundland and Labrador, and in countries such as Australia and Sweden. In these provinces and countries, treatment refusal for individuals likely to harm themselves or others or significantly deteriorate without appropriate treatment is not permitted.

**Q11: Could the Charter Challenge change how the mental health care system works in BC?**

If the CCD wins their case and the Charter Challenge is successful, BC will need to change its Mental Health Act. This could lead to delays in treatment greatly affecting the patient, longer hospital stays, and more strain on families and on the system. Psychiatric beds will also be blocked by patients who must be detained but cannot be treated, making access to psychiatric care even more difficult.

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**Reference**

<sup>i</sup> Specifically, involuntary patients who have made a prior wish specifically stating that if hospitalized, they are not to receive medical treatment for their illness.