



British Columbia Schizophrenia Society Position Synopsis:

BC Government's Response to the Ombudsperson's Report

Committed to Change: Protecting the Rights of Patients under the Mental Health Act

The British Columbia Schizophrenia (BCSS) is dedicated to upholding the right to health and the legal rights of persons suffering from schizophrenia and other serious mental (brain) illnesses. These rights can be lost because severe mental illness often robs people of the awareness that they have a harmful but treatable illness. These people often refuse voluntary treatment needed to restore their health and rights. The only alternative for restoring rights is involuntary mental health treatment under the BC Mental Health Act (MHA). The MHA has a number of protections for involuntary patients which require processes and forms to be correctly completed.

The Ombudsperson conducted an investigation in 2017 on the completion of legal forms required by the MHA. His Report outlines many serious deficiencies and makes 24 recommendations.

BCSS commends the Ministry and Health Authorities for already acting on 20 of the 24 recommendations, which will help reach 100% compliance. BCSS believes that these actions alone will meet the requirements of the MHA and the Canadian Charter of Rights and Freedoms.

BCSS strongly rejects the recommendation to create a new, add-on, very expensive, outside, so-called "independent" rights advisor service, with expanded mandate and powers. This new add-on service will not meet the timelines required by the MHA. The current system, criticized by the Ombudsperson, will therefore have to continue unless the add-on service is funded for 24 hour 7 day access which is now provided by professional hospital staff. In the opinion of BCSS, the new legal service is not required by the MHA or the Charter.

Although finding serious compliance issues pertaining to the MHA, the Ombudsperson clearly understands the critical importance of the current Act (page 1, 9). BCSS commends him for this:

The Ombudsperson's criticism of the current system and rationale for recommending an add-on service and BCSS responses, in summary form, are: (Page 83)

1. "First, the information is not provided to the patient by an arm's-length or neutral body". **BCSS response.** *This situation is no different than that of a police officer providing rights information. Neither the Charter nor the courts require a whole "independent" system of rights advisors for police officers who tell an arrestee of their rights, even though officers have a potential "conflict of interest" and "power imbalance" with the person. Also being at arm's length does not rule out bias.*

Society Board Members

David Halikowski
Erin Berger
Paul Bhushan
Lena Bortnick
Colleen Crossley
Fred Dawe
Jamie Graham
Dr. John Gray
Susan Inman
Matthew Langlois
Joanne Leung
Don Monsour
Donna Motzer
Gerhart Pahl

Medical Advisory Board

William G. Honer
MD, RCPC
Bill MacEwan
FRCPC
Diane McIntosh
MD, FRCPC
Anthony Phillips
PhD, FRSC
Deborah L. Thompson
BScPharm, PharmD, BCPP
Randall White
MD, FRCPC



2. “The relationship between the person providing the rights information and the facility may influence the patient’s willingness to ask questions, challenge the basis for the detention or seek advice.” *BCSS response. A patient may feel much more comfortable asking questions of a health professional trained to communicate with someone in an agitated or psychotic state, rather than with a non-clinically trained stranger.*

3. “Second, it does not provide for a patient who has questions or who, on receiving the rights information, asks for certain steps to be taken”. *BCSS response. The Form that is read to patients specifically states, “You may ask me questions at any time.” It also provides the detailed steps for applying to the Review Panel for discharge against medical advice.*

4. “Thus, individuals providing the information may be unfamiliar with the purpose of providing the information and might not be trained in or familiar with the rights notification role”. *BCSS response. We doubt this claim and, if it is valid, then the Ombudsperson’s recommendations for the retraining of staff, already being implemented by Health Authorities, will address it. This issue does not need an add-on rights advisor service to address it.*

5. “Fourth, the notice that the director is required to provide to involuntary patients is limited to specific information: there is no obligation on the director, or any other entity, to provide patients with advice about the various avenues of legal recourse that are available to them and whether, given their particular circumstances, those avenues are likely to be successful.” *BCSS response. The Charter requires information on rights but it does not require advice on options or their likely success. A lawyer is qualified to do this but are para-legals licensed to do this? That is why, presumably, the Charter and MHA require the person to be informed of a right to instruct counsel without delay. This greatly expanded mandate will be costly and disruptive for patients and families.*

Society Board Members

David Halikowski
Erin Berger
Paul Bhushan
Lena Bortnick
Colleen Crossley
Fred Dawe
Jamie Graham
Dr. John Gray
Susan Inman
Matthew Langlois
Joanne Leung
Don Monsour
Donna Motzer
Gerhart Pahl

Problems with the proposed add-on service:

1. Cannot meet MHA timelines unless 24/7 availability. The MHA require rights notification “on” detention (admission). Admissions occur any time. Therefore the current criticized system will have to continue and be duplicated when the outside rights advisor arrives after admission.

2. Duplication of service: costs and confusion. Hospital costs will not decrease with the new service. Staff will be confused as to who does what when. Patients will be confused: “why does a person tell me the same thing as my nurse. Should I not trust my nurse?”

3. Increased direct costs. (The Ombudsperson did not address costs). Approximately 33,000 visits covering 75 hospitals and 3000 community homes (extended leave) will be required each year. Costing estimated at \$300 per visit yields a direct service cost of \$9,900,000. Management and lawyers costs rent and other cost add at least 10% for total of \$10,890,000.

There will be additional Review Panel hearings at \$2,310 per hearing (see Mental Health Review Board 2017/2018 Annual Report) and additional court applications and additional legal aid costs.

Medical Advisory Board

William G. Honer
MD, RCPC
Bill MacEwan
FRCPC
Diane McIntosh
MD, FRCPC
Anthony Phillips
PhD, FRSC
Deborah L. Thompson
BScPharm, PharmD, BCPP
Randall White
MD, FRCPC



4. Uncompensated Costs. Hospitals should be compensated for the considerable clinical time that will be diverted from patient care to rights advisors questions, additional review panel and court involvement.

5. Disruption to patient and family lives. With more legal resources supporting an involuntary patient’s desire to leave the hospital, it is highly likely that more patients will be discharged prematurely in part for clinicians to avoid Review Panels. These patients are more likely to become ill and be re-hospitalized. This not only disrupts their lives, their loved ones’ lives and adds cost to the system, it also impairs prognosis leading to even more readmissions.

6. Bias and lack of independence of proposed rights advisor agency. The proposed agency is the Community Legal Assistance Society (CLAS). It is the BCSS opinion that for this particular service CLAS is biased against involuntary treatment and is not independent. Anti-psychotic medication is the main treatment for involuntary patients to restore their health, liberty and legal rights all over the world. It is taken voluntarily by millions. Hundreds of scientific studies and national drug licensing bodies show it is safe and effective. Length of detention has been reduced from years to weeks since these drugs have been invented. Despite this evidence, CLAS bias shows through. They write:

“While many people use the term “medications” to describe a type of psychiatric treatment, others find that term misleading or offensive, because many psychiatric treatments do not have a curative or therapeutic effect, but rather have a sedative effect that alters behaviour.” Then disingenuously add: “This report takes no position on the benefits, efficacies, or safety of psychiatric treatments.”) *Operating in Darkness*

Society Board Members

David Halikowski
Erin Berger
Paul Bhushan
Lena Bortnick
Colleen Crossley
Fred Dawe
Jamie Graham
Dr. John Gray
Susan Inman
Matthew Langlois
Joanne Leung
Don Monsour
Donna Motzer
Gerhart Pahl

What clear thinking CLAS rights advisor would not make every legal effort to get an involuntarily detained psychiatric patient out of hospital because of the belief that psychiatric medications are generally doing the patient more harm than good?

We believe CLAS advisors have clear conflicts of interest and would not be “independent”. CLAS advisors will likely advise patients to consult with CLAS lawyers, not other legal firms. Similarly, a CLAS advisor will likely be the person’s advocate if they go to the Review Panel. As well, CLAS advisors will likely recommend CLAS lawyers when patients are advised to use court avenues for discharge or seek legal remedies for allegedly invalid certificates.

The most important “conflict” though is between the objectives and values of families, government, health facility and staff to ensure that the person’s health rights are protected with due regard for other rights versus the legal rights advisor concern about legal rights (not health) and in facilitating the patient’s wishes to be discharged no matter what the consequences for the patient or family or society.

Medical Advisory Board

William G. Honer
MD, RCPC
Bill MacEwan
FRCP
Diane McIntosh
MD, FRCP
Anthony Phillips
PhD, FRSC
Deborah L. Thompson
BScPharm, PharmD, BCPP
Randall White
MD, FRCP

Conclusion. BCSS is confident that the comprehensive system of training, auditing, and other measures recommended by the Ombudsperson that are being implemented by the Ministry and Health Authorities will meet the requirements of the MHA and Charter. We believe a so called



independent rights system will be very expensive and reduce clinical time for patients. CLAS is too biased to provide independent rights advice if that option is pursued.

Society Board Members

David Halikowski
Erin Berger
Paul Bhushan
Lena Bortnick
Colleen Crossley
Fred Dawe
Jamie Graham
Dr. John Gray
Susan Inman
Matthew Langlois
Joanne Leung
Don Monsour
Donna Motzer
Gerhart Pahl

Medical Advisory Board

William G. Honer
MD, RCPC
Bill MacEwan
FRCP
Diane McIntosh
MD, FRCP
Anthony Phillips
PhD, FRSC
Deborah L. Thompson
BScPharm, PharmD, BCPP
Randall White
MD, FRCP

