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Caring for the Caregiver Conference
Oct. 16th, 2021
Involuntary Treatment; A Fate Worse than Death?

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Testimony of John Gray to Select Committee, 2009

Treatment Delayed - Liberty Denied

- examined the plight of patients who had to be detained (harm to self/others) but could not be treated (had capacity and refused treatment) eg. Starson v Swayze
- patients could not get well enough to be released
- two patients detained 20 years; one detained 25 years
- Cost at $600/day was $4.38 million for 20 years
- This cannot happen in BC and most other provinces/countries because they would treat people and they would be discharged

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2010 Final Report of the Select Committee

"The Select Committee believes, however, that the right to autonomy must be balanced with the right to be well. The Select Committee also believes that **our present laws tie the hands of health professionals and families and have contributed to the criminalization of mental illness, where individuals need to be arrested in order to receive care.**"

"While Ontario undoubtedly needs better access to community supports and hospital beds, some people will not avail themselves of such services because **it is the nature of their condition to deny that they are ill.** Furthermore, there are a number of psychiatric conditions for which a delay in treatment can result in an irreversible deterioration in health. Ontario's current legal framework is not adequately nuanced to address this predicament."

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2010 Final Report of the Select Committee

Recommendation 21

Create a task force to investigate and **propose changes** to Mental Health Act and policy pertaining to involuntary admission and treatment. The changes should **ensure** that involuntary admission **criteria include serious harms that are not merely physical and that involuntary admission entails treatment.**

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2010 Final Report of the Select Committee

Recommendation 22

Create a task force to investigate and propose changes to PHIPA to **ensure caregivers** providing support to, and often living with, an individual with a mental illness or addiction **have access to the personal health information necessary to provide that support**, to prevent the further deterioration in the health of that individual, and to minimize the risk of serious psychological or physical harm.

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Anosognosia and Capacity

Capacity is Required to Refuse Consent

Starson v. Swayze (Supreme Court of Canada)

"Nonetheless, **if a patient's condition results in him being unable to recognize that he is affected by its manifestations**, he will be unable to apply the relevant information to his circumstances, and unable to appreciate the consequences of his decision."

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Anosognosia and Eating Disorders

There is a recent Consent and Capacity Board case dealing with a 20 year old patient who was found to lack capacity to make treatment decisions regarding her eating disorder.

She failed the test of capacity because she did not believe that she had an eating disorder and so could not appreciate the consequences of receiving or not receiving treatment.

Treatment was provided without her consent.

Anosognosia and Substance Use Disorder

"Of the 20 million people in the United States who suffer from a substance abuse disorder, 19 million of them - 95 percent - say they don't need help, according to the 2013 National Survey on Drug Use and Health. That is remarkably high regardless of symptoms or their severity. Even 90 percent of the over 8 million people who experience substance-related withdrawal symptoms - trembling hands, seizures, hallucinations - don't believe they need addiction care."

The End of Hitting Rock Bottom, Dec. 6, 2015, Boston Globe

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Does the Mental Health Act apply to Substance Use Disorder?

- Criteria (1) mental disorder? Yes
  - Diagnostic and Statistical Manual of Mental Disorders (DSM)
  - Consent and Capacity Board
- Criteria(2) serious harm? Yes
  - Can be “serious bodily harm” or “serious physical impairment”
- “Precedent-setting decisions support the legal opinion that substance use disorders can satisfy both the “mental disorder” and “harm” criteria in all provinces and that involuntary admissions for this population are possible under current legislations.”

- Reid N, Chartier LB, Orkin A, Klaiman M, Naidoo K, Stergiopoulos V. Rethinking involuntary admission for individuals presenting to Canadian emergency departments with life-threatening substance use disorders. CJEM. 2020 Sep;22(5):629-632. doi: 10.1017/cem.2020.385. PMID: 32538339.

Angus Reid Poll, 2021

88% of Canadians are in favour of involuntary treatment for adults (not just minors) with opioid use disorder, yet the subject remains taboo in political and academic circles.

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How widespread is the drug poisoning crisis?

In 2018 and 2019, one is six deaths of Ontarians 15-24 was opioid related, exceeding each year all COVID deaths to date in Ontario for this age group.

“Right now in B.C., drug toxicity is the leading cause of death for those 19 to 39 years of age.”

Lisa Lapointe, BC’s Chief Coroner

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Forming: If at first you don't succeed… try again

Marcus Gould, 17, dies of overdose in Ontario

Application for a Form 2 was rejected even though:

- Minor
- Living on the street (an adverse childhood experience)
- Not in School
- Not Working
- Believed to be using drugs
- Had other mental health conditions

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Form 2 Criteria (Justice of the Peace)

Similar to Box A in Form 1

Where information **upon oath** is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(a) has threatened or attempted or is threatening or attempting to cause **bodily harm to himself** or herself;

(b) has behaved or is behaving violently towards another person or has caused or is causing **another person to fear bodily harm from him** or her; **or**

(c) has shown or is showing a **lack of competence to care for himself** or herself,

and in addition based upon the information before him or her the justice of the peace has reasonable cause to believe that the person is **apparently suffering from mental disorder** of a nature or quality that **likely will result in**,

(d) **serious bodily harm to the person**;

(e) serious bodily harm **to another person; or**

(f) **serious physical impairment of the person**,

the justice of the peace may issue an order in the prescribed form for the examination of the person by a physician.

Form 2 Criteria (Justice of the Peace)

Similar to Box B in Form 1

Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(a) has **previously received treatment** for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person; and

(b) has **shown clinical improvement as a result of the treatment**,

and in addition based upon the information before him or her the justice of the peace has reasonable cause to believe that the person,

(c) is apparently suffering from **the same mental disorder** as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

(d) given the person's history of mental disorder and current mental or physical condition, is likely to cause **serious bodily harm to himself** or herself **or to another** person or is likely to suffer substantial mental or physical deterioration or serious physical impairment; and

(e) is apparently incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility **and the consent of his or her substitute decision-maker has been obtained**,

the justice of the peace may issue an order in the prescribed form for the examination of the person by a physician.

Tips for Form 2

- know the law:
  - harm doesn't have to be imminent
  - bodily harm includes psychological harm
  - substance use disorder is a mental disorder
- mention all diagnosed mental health conditions; age/maturity
- provide detailed, chronological evidence of lack of insight; harm to self/others including psychological harm (risk of incarceration?) especially if worsening from previous Form 2
- mirror language of Mental Health Act/Form 2
- try to get police to inform you when they will apprehend, then go to hospital to advocate with physician doing the assessment
- try for a different Justice of the Peace if first attempt unsuccessful

Tips for Consent and Capacity Board (CCB)

- Patient found incapable/held on involuntary status can appeal to CCB
- Caregiver may not receive notice unless asked to be a witness
- Often both issues of capacity and harm to self/others
- Document evidence of those issues (keep a journal with dates)
  - Capacity: “I’m not ill”
  - Harm to self/others: evidence of risky/harmful behaviours; threats of, or actual, harm to others
- Caregiver can be represented by a lawyer
- Online Course: CCB; What family caregivers need to know
- Mock Hearing to Determine Patient Capacity to Make Psychiatric Treatment Decisions

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Ally Thomas,12, dies of 4th overdose in BC

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Substance Use Disorders Affect Autonomy

Sunnyside Home v Ontario Nurses Association

Substance use disorder is a disability under the Ontario Human Rights Code.

Nursing home (employer) ordered to accommodate RN(employee):

"…I find that these substance use disorders are a mental disorder characterized by, among other things, compulsive behaviour and either a complete inability or a diminished capacity to resist the urge to engage in behaviour supporting her addiction."

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Human Rights Laws vs. Health Laws

Sunnyside illustrates that our human rights laws protect the livelihoods of functional employees because substance use disorders are a disability and have a detrimental effect on a person's autonomy. Yet our health laws, as drafted or applied, are not protecting the lives of youth with substance use disorders because of patient autonomy.

What is a Rights Based Approach?

Competing rights must be balanced

- Eg. where a person does not want to die, and their right to refuse treatment (autonomy) conflicts with their right to life and security of the person, which right should be prioritized?

According to the WHO and UN Committee on the UN Convention on the Rights of the Disabled, it's the right to refuse treatment

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Uncivil Liberties

"The opposition to involuntary committal and treatment betrays profound misunderstanding of the principle of civil liberties. Medication can free victims from their illness — free them from the Bastille of their psychosis — and restore their dignity, their free will and the meaningful exercise of their liberties."

Herschel Hardin, BC Civil Libertarian and father of a child with schizophrenia

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What is a Rights Based Approach for Minors?

The UN Convention on the Rights of the Child

- Article 3: Best Interests of the Child
- Article 24: Access to Health Care Facilities and Services
- Article 33: Right to be protected from the use of illegal drugs and from being used in the drug trade

Secure care: a question of capacity, autonomy and the best interests of the child Angie L. Hamilton, Daphne G. Jarvis, Barbara E.L. Watts, CMAJ Feb 2020, 192 (5) E121-E122; DOI: 10.1503/cmaj.73252

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University of Toronto Conference, 2009

- Putting the best interest of the child first would require significant changes in current models of formal health care
- Need strategies to keep young people out of the criminal justice system
- Codes of conduct by the colleges of health professionals on the best interests of the child

Best Interests of the Child: Meaning and Implications in Canada, 2009

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Involuntary Treatment

Unethical?

Ineffective?

Traumatic?

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What do U.S. Addiction Medicine Physicians Think?

- 60.7% favored, 21.5% opposed, and 17.8% were unsure regarding civil commitment for substance use disorders

- 38.4% were unfamiliar with these laws and more than a quarter (28.8%) were unsure if civil commitment for substance use disorders was permitted in their state

- Although most addiction physicians in this study approve of CC for SUDs, enthusiasm for this compulsory intervention is mixed with strongest support for patients with opioid and alcohol use disorders. At the same time, many respondents are unfamiliar with these laws and most believe more education and research are needed.

Civil Commitment for Substance Use Disorders: A National Survey of Addiction Medicine Physicians

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Elliot Eurchuk, 16 dies of overdose in BC

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Reality

Where does this leave us?

Even for minors, we need safe injection sites and a regulated supply because:

1. No residential treatment on demand (months to years)

2. No ability to intervene (if we could see #1)

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How to Advocate

- volunteer information to health care providers
- take chronological notes documenting lack of insight; harm to self/others including psychological harm (risk of incarceration?)
- put safety concerns (for patient/others) in writing (on legal letterhead?)
- if patient refuses to involve family, remind providers they should encourage family engagement as it improves outcomes and patient should be asked throughout course of treatment
- know the law (eg. substance use disorder is a mental disorder)
- be the squeaky wheel; advocate and never give up
- join Ontario Family Caregivers' Advisory Network (OFCAN) and Families for Addiction Recovery (FAR)

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References/Resources

- Treatment Delayed - Liberty Denied
- Select Committee on Mental Health and Addictions Final Report 2010
- Open Minds, Healthy Minds Ontario's Comprehensive Mental Health and Addictions Strategy (p.25)
- Starson v Swayze
- Rethinking involuntary admission for individuals presenting to Canadian emergency departments with life-threatening substance use disorders
- Angus Reid Poll, 2021
- Online Course: Capacity and Consent Board; What family caregivers need to know
- Mock Hearing to Determine Patient Capacity to Make Psychiatric Treatment Decisions
- BC Bill 22
- Secure Care: More Harm Than Good (CMAJ)
- Re Secure Care: More Harm Than Good (CMAJ) Response of BC Pediatric Society
- Secure Care: A question of capacity, autonomy, and the best interest of the child (CMAJ)

References/Resources

- Sunnyside Home v ONA
- UN Convention on the Rights of Persons with Disabilities
- Canada Should Retain Its Reservation on the United Nation's Convention on the Rights of Persons with Disabilities
- UN Convention on the Rights of The Child
- Best Interests of the Child: Meaning and Implications in Canada, 2009
- Civil Commitment for Substance Use Disorders: A National Survey of Addiction Medicine Physicians
- Anti-Psychiatry and the UN Assault on the Mentally Ill by Marvin Ross
- An Open Letter From Ontario to the BC Government in Defence of Their Mental Health Act
- Involuntary Treatment
- META:PHI Webinar on Family-Centred Care
- Proposed Ontario Caregiver Recognition Act (2011)
- Aid to Capacity Evaluation (ACE)
- Ontario Family Caregivers' Advisory Network (OFCAN)
- Families for Addiction Recovery (FAR)

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