

# Personal Rights and *The Mental Health Services Act*

*The Mental Health Services Act (MHSA)* provides access to mental health treatment especially when a mental illness hinders a person from realizing they have a treatable illness.

## Understand your rights under *MHSA*.

In Canada, you have many protections from discrimination because of mental disability.

Section 15 of the Canadian Charter of Rights and Freedoms says people must be treated as equal. Each person can expect to be treated fairly even though there may be differences of nationality, race, colour, religion, sex, age, mental or physical disability.

No one is allowed to discriminate against you for any reason including a mental disability.

## General rights

The law says people must take your ability into account. They must treat you fairly and equally. Mental health services must be provided with the same consideration for all people.

## Agreeing to receive mental health services

Any person may ask for and receive mental health services. If you ask for services:

- You have the right to accept or refuse them.
- You must give consent before you can be examined or treated.

If you cannot understand what this means, your nearest relative may explain this for you OR someone else may give permission if you have appointed someone else in a health care directive or applied to a judge to name someone else. If you are a voluntary inpatient and wish to leave treatment, a nurse can require you to stay for up to three hours for a doctor's examination if the nurse thinks it is necessary.

## Services against your will

Perhaps you need care and treatment for your mental health, but you are unable or unwilling to ask for help.

Under exceptional circumstances, the *MHSA* allows for you to receive care and treatment without your consent. The Act also protects your rights when this happens.

## Examination against your will

A person may be ordered to be examined by a psychiatrist. This can happen in the following ways:

- A doctor examines you. The doctor believes you have a mental disorder and need treatment. The doctor writes a certificate (Form A) saying you must be examined by a psychiatrist. An authorized (prescribed) mental health professional who may be a resident in psychiatry or a nurse may examine you instead of a doctor if a doctor is not available.
- Another person believes you have a mental disorder. That person presents evidence to a judge. The judge writes a warrant saying you must be examined by a psychiatrist.
- A police officer believes you have a mental disorder which will probably make you harm yourself or others, or make your illness get worse if you are not treated.
- You are in another province and are admitted against your will. Then you may be moved back to Saskatchewan to be examined.
- You are charged with an offence. A judge orders that you be examined by a psychiatrist.
- You have been held under the Criminal Code and you have to be examined.
- You are under a Community Treatment Order and have not met the terms. Your doctor orders an examination.

The examination must be done promptly. You have the right to:

- be told the reasons for the examination;
- contact a lawyer;
- receive a copy of any certificate, warrant or order that says you must be examined.

## Temporary hold for voluntary patients

Where a nurse in a mental health centre believes that a voluntary patient intends to leave the mental health centre, and the nurse believes on reasonable grounds that the patient should be held because they meet the involuntary admission criteria, the nurse can detain the person for up to three hours while the person is examined.

The three hour hold does not give the nurse the authority to prescribe medications or treat the patient with medications without a doctor's order.

## Admission against your will

You may be admitted to a mental health centre in a hospital and held there against your will. This can happen in three ways:

- under medical certificates;
- under orders where you have been charged or convicted of a criminal offence; or
- under a court order for long-term detention.

To be held under medical certificates, two different certificates are signed by two different doctors. At least one doctor must be a psychiatrist and one can be a resident in psychiatry. Both doctors must certify the following:

- you have a mental disorder and need treatment and supervision which can only be provided in a mental health centre, often in a hospital;
- your mental disorder keeps you from fully understanding that you need treatment and supervision, so you cannot make an informed decision; and
- your mental disorder will probably make you harm yourself or others, or make your illness get worse if you are not treated.

In an emergency you may be held under one medical certificate for up to three days. Where two doctors have written medical certificates, you may be held for up to 21 days. If your doctor believes you need to stay longer, two more medical certificates may be written to make you stay up to another 21 days.

## Treatment

If you are asking for treatment and care, you cannot be treated without your consent.

If your mental illness keeps you from understanding that you require treatment, and you won't give your consent, you may be treated without your consent in the following situations:

- i. you are being held under medical certificates in a special mental health centre in a hospital;
- ii. you are being held under a court order for long-term detention; or
- iii. you are placed under a Community Treatment Order.

There are rules that must be followed when you are treated without your consent:

- your doctor must explain the treatment to you and, wherever possible, consider your views depending on your medical condition;
- before electroconvulsive therapy (ECT) is given, two psychiatrists must examine you and write special certificates; and
- psychosurgery and experimental treatment are not allowed.

## Community Treatment Order (CTO)

Your psychiatrist may place you under a Community Treatment Order, which allows you to live in the community while receiving treatment.

This can only happen if:

- you have a mental disorder which requires treatment and supervision in the community, and you do not need to be in hospital;

- you have been hospitalized in the last two years including the current admission;
- your mental disorder could make you harm yourself or others, or make your illness get worse if you are not treated;
- the services which you need are available in the community;
- your mental disorder keeps you from understanding that you need treatment and supervision, so that you cannot make an informed decision; and
- you are able to co-operate with the CTO.

If a second doctor examines you and supports the CTO written by your psychiatrist, a CTO is issued for up to six months and can be renewed by one doctor for six month periods. You must comply with the order. You must then follow prescribed medical treatment and attend appointments with your psychiatrist or case manager.

## Protection under the Act

When a certificate is issued on you and you are required to attend for treatment against your will, you have the right to special protection under the Act.

**You may ask to speak with an official representative at any time.**

## Official representatives

Official representatives are usually lawyers with expertise in the mental health field. They have been appointed to help people who have been detained under the *MHSA* understand their rights.

An official representative:

- Will visit you if you are being treated, transferred or ordered to receive ECT against your will. He or she will visit you within 24 hours if you are being held under a certificate.

- Is notified if you are examined against your will. He or she may contact you.
- Is notified if you are placed under a CTO. He or she may contact you.

## Review panel

A review panel has been set up in your health region to investigate appeals. There are three people on the panel. The chairperson is a lawyer, the vice chairperson is a doctor, and the third person is a citizen.

- You may appeal to the review panel if you disagree with being held, transferred or are to be treated with ECT against your will.
- If you appeal, the review panel will hold a hearing. This will happen within three business days of your application.
- An appeal will be sent to the review panel for you automatically if you are held for longer than 21 days and you did not appeal the first set of certificates. If you are under a CTO for longer than six months, an appeal will be sent to the review panel automatically.
- You may also appeal to the review panel if the doctor has ordered ECT. ECT is not allowed while the review panel is reviewing your appeal.

## Your rights at a hearing

You have the right to:

- be present at an appeal hearing;
- give evidence;
- see and hear all evidence given by others;
- cross-examine people;
- be represented by any other person; and
- ask an official representative to accompany you and provide help.

There is no charge for official representative or review panel services.

## The authority of the review panel

The review panel can over-rule decisions which have been made, including:

- decisions to keep and treat you in hospital;
- transfer you;
- give you ECT; or
- give you treatment in the community against your will.

The review panel has three business days to give you its decision.

If you do not agree with a decision made by the review panel on any matter except ECT, you have the right to appeal to the Court of Queen's Bench.

## Confidentiality

All information about your diagnosis and treatment is confidential. Information will only be released:

- to persons who need it to give you treatment;
- to other persons with your written consent; and
- otherwise as required by law.

You have a right to information about yourself. It may be kept from you only if it will hurt you or another person. In case of dispute, you may appeal to the Privacy Commissioner for an order to release the information.

## For more information

If you would like more information about your rights under *The Mental Health Services Act*:

- ask a psychiatrist or other mental health professional;
- ask an official representative in your health region; or
- contact the mental health service of your local health region.