

The logo for 'HEALTH JUSTICE' is displayed in a bold, orange, sans-serif font. The words are stacked vertically, with 'HEALTH' on top and 'JUSTICE' below it. A thin orange circle is positioned to the right of the text, partially overlapping the letters of 'JUSTICE'. The entire logo is set against a dark teal background.

HEALTH JUSTICE

Integrating Human Rights in Mental Health

Provincial Training Conference – October 8, 2020

A thin orange arc is positioned above the text box.

Acknowledging territory and impacts

A thin orange arc is positioned below the text box.

Roadmap

- *Mental Health Act*
- Compliance and human rights issues
- Health Justice and project to promote reform to *Mental Health Act*
- Ethical, legal, and practical considerations in providing services to clients with mental disabilities

Roadmap

- Take care of yourselves and each other
- Ask questions, we will not use your name

Part of me feels trapped behind the mask after years of being hurt, rejected, having my trust and heart broken, and being used and abused. I had to put the mask on. I struggle with my own identity. I'm both the villain and the superhero of my own story.

- *Photovoice participant, Imagining Inclusion Project*
www.imagininginclusion.ca

Fast Facts – *Mental Health Act*

Police may apprehend, detain, and convey anyone to a designated facility if satisfied from personal observations, or information received, that the person:

- (a) is acting in a manner likely to endanger that person's own safety or the safety of others, and
- (b) is apparently a person with a mental disorder.

Fast Facts – *Mental Health Act*

- Myth of dangerousness criteria – i.e. commonly held belief that you must be considered at risk of harm to yourself or others to be detained under the *Mental Health Act*
- Criteria for involuntary admission and detention permits detention for the protection of the person or the protection of others **OR** to prevent substantial mental or physical deterioration; and

Mental Health Act

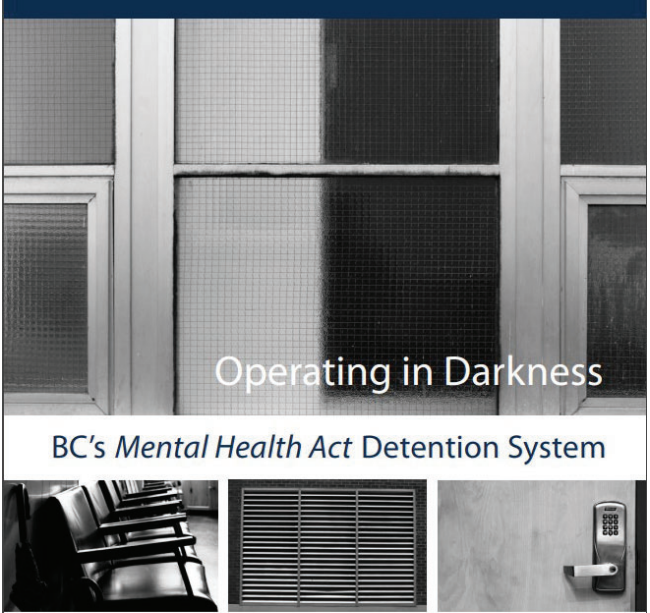
- Every involuntary patient is, “during detention, subject to the direction and discipline” of facility staff, including restraints and seclusion.
- Every involuntary patient is “deemed” to consent to any form of psychiatric treatment regardless of capacity to make treatment decisions
 - this also excludes trusted personal supporters like family members making treatment decisions for an involuntary patient
- Detainees may be placed on leave in a community setting on conditions of leave and can be recalled if suspected of violating conditions of leave.
- Facilities may issue warrants for police apprehension and transportation to recall from leave or if a detainee goes AWOL.

Fast Facts – *Mental Health Act*

- Applies to any age – there is no minimum or maximum age
- Detention is indefinite – there is no maximum length of detention
- No automatic hearings to review detention where the state justifies the continuing need for detention – a hearing only takes place if a detainee requests one
- There is no legislated right to access clothing, same-sex clothing removal, visitors, access to communication methods, grounds passes etc.
- There is no services funded for detainees to access independent legal information and advice when they are detained


Research found...

- Mental health detentions in BC have increased dramatically, but the number of voluntary mental health admissions has decreased per capita.
- There is widespread inconsistency and non-compliance with existing *Mental Health Act* requirements, with few safeguards in place.
 - E.g. Health care providers discouraging detainees from exercising right to review detention by offering inducements, making threats, exerting pressure, and actively interfering with access to hearings.
- The *Mental Health Act* is insufficient to fulfill constitutional rights of detainees even if complied with.
 - E.g. No guaranteed access to independent legal advice when you're detained.



Operating in Darkness

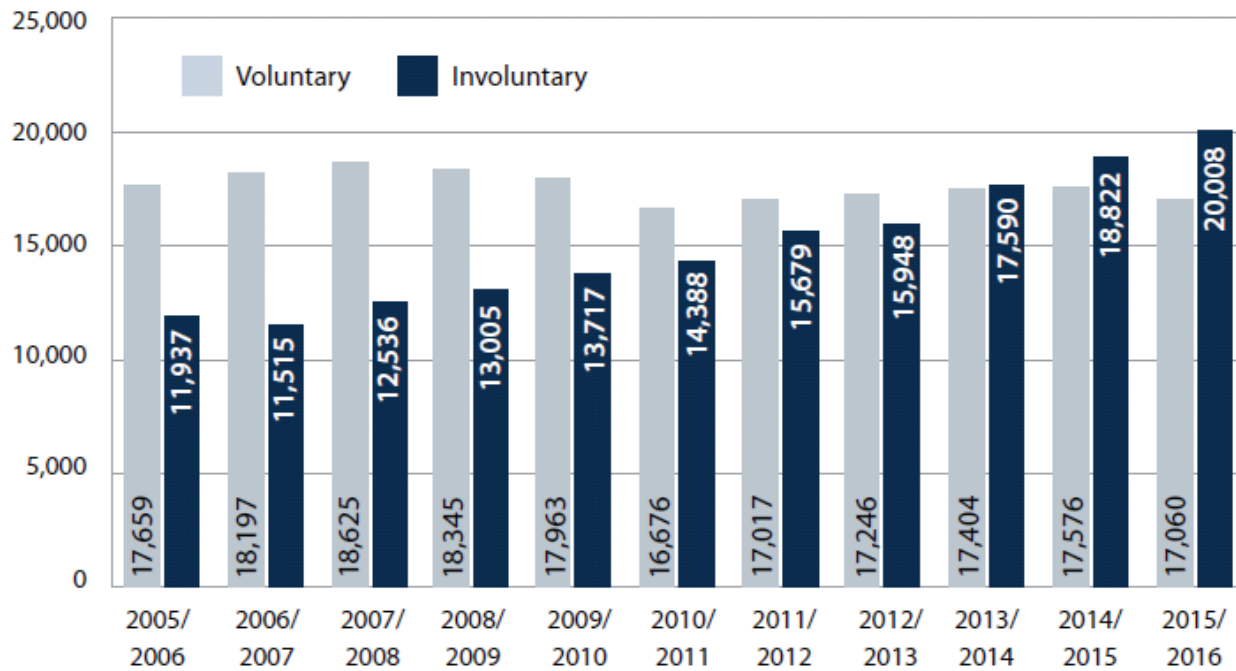
BC's *Mental Health Act* Detention System



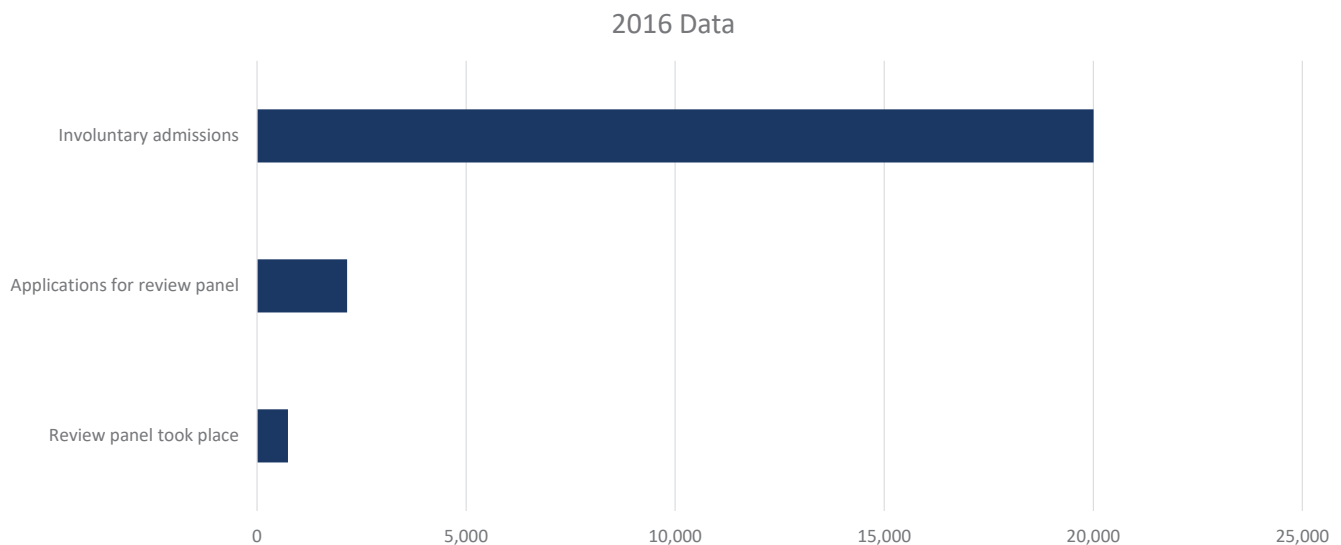
Community Legal Assistance Society

November 2017

BC Involuntary / Voluntary Mental Health Hospitalizations

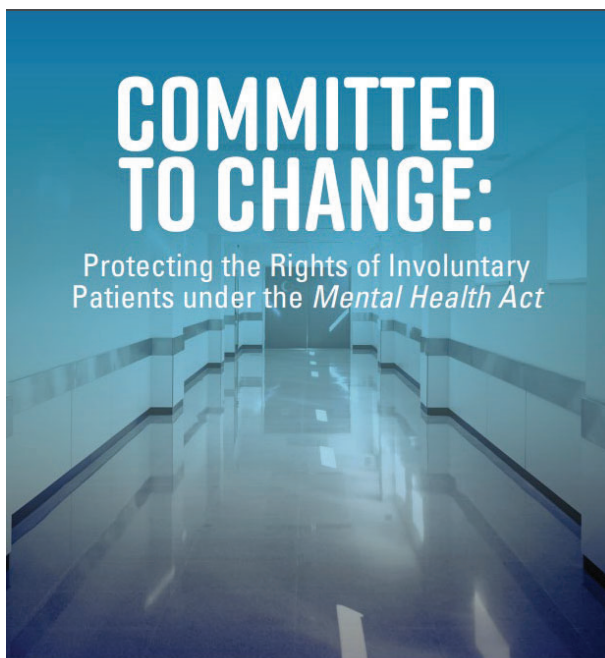
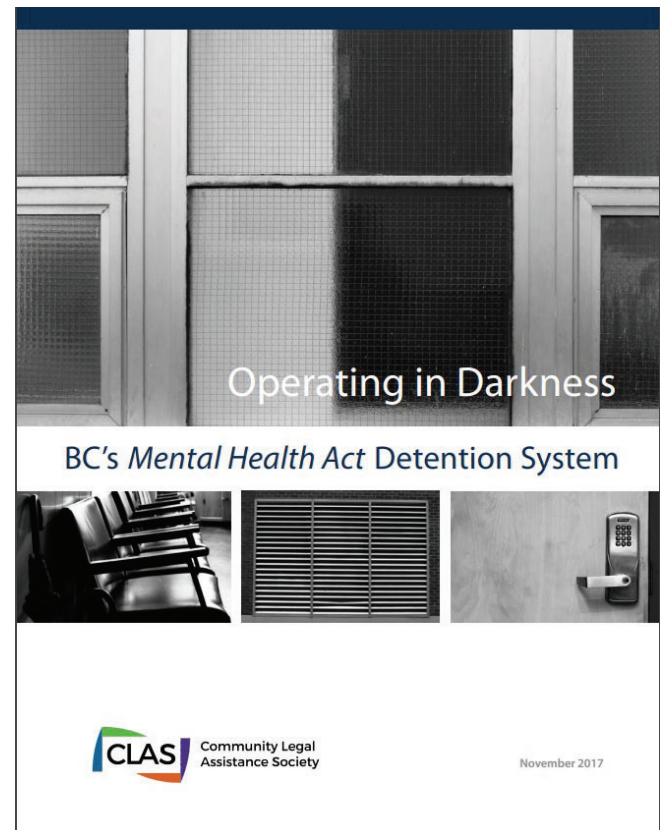


Mental Health Review Board review panels



Recommendations...

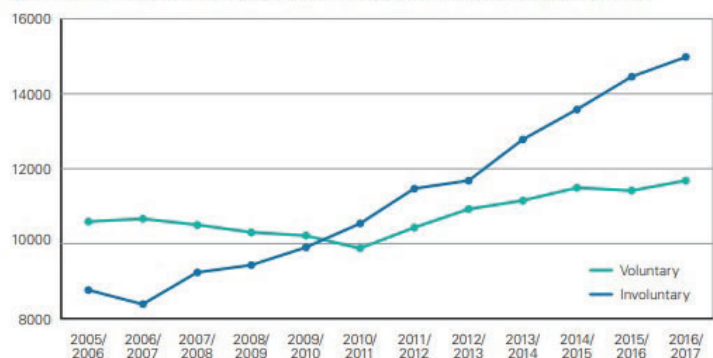
- Primary recommendation: establish an independent law reform process to review and reform the *BC Mental Health Act*.
- Recommended establishing a legal aid funded service to provide detainees with independent legal advice on detention.
- Over 50 specific recommendations for reform to statute, regulation, policy, and practice to BC Government, Ministries of Health and Mental Health and Addictions in conjunction with the health authorities, the Mental Health Review Board, Ombudsperson, and the Legal Services Society.

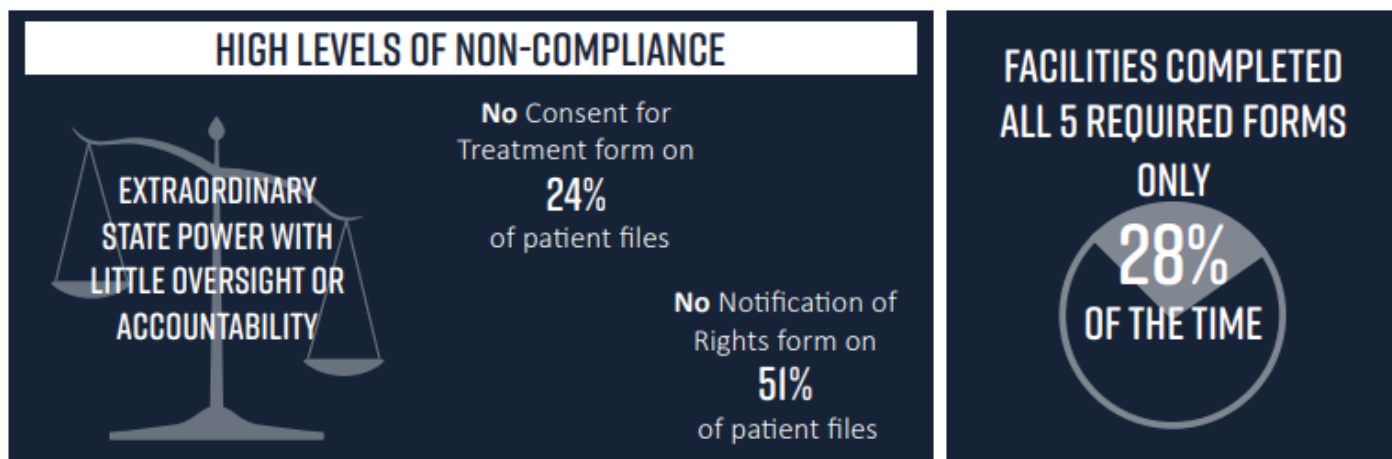


Compliance audit...

- Audited compliance with 5 forms required when someone is initially detained under the *Mental Health Act* across a 1-month time period in BC.
- Increase in detention trend continued.

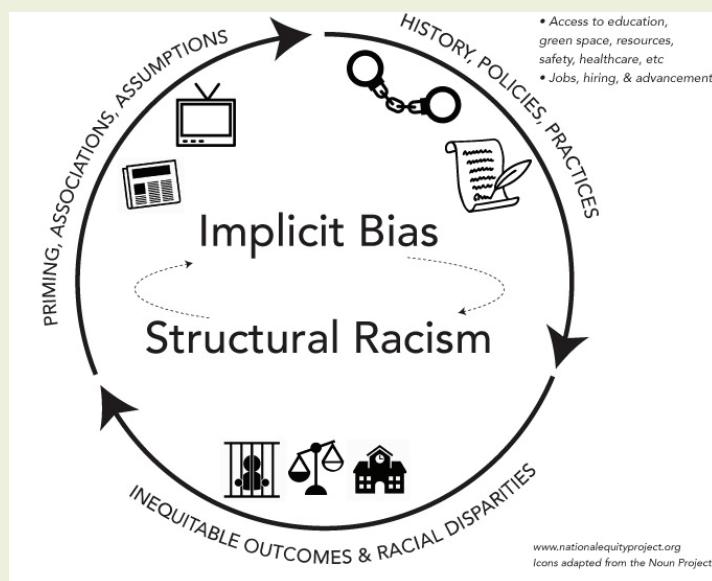
Figure 1: Discharges of Unique Voluntary and Involuntary Psychiatric Patients from Schedule B and C Facilities Designated under the *Mental Health Act*, by Fiscal Year¹²





Recommendations...

- BC is one of the few jurisdictions in Canada with no legal aid funded service to provide detainees with independent legal advice on detention – select an independent agency to deliver that service by November 2019, service to begin April 2020.
- 24 specific recommendations to improve education and compliance with *Mental Health Act*.



"To treat someone who's at their most vulnerable and ill and not doing well in such a harsh way is so much worse than the illness itself."

- Lived experience expert

How have you seen the health system, or the mental health system, impact your clients?

Is the impact always positive?

Have you ever seen example where, in trying to help, the system can harm people?



Now what...

- Why has *Mental Health Act* law reform progressed in other jurisdictions in Canada, but not BC?
 - Other provinces have advocacy organizations by and for people who have experienced involuntary and coercive mental health care.
 - Mental health legal aid has led to more cases proceeding through court.
- Organizational vacuum in BC
 - Community Legal Assistance Society – contract to provide an advocate or lawyer to a detainee who has scheduled a hearing at the Mental Health Review Board, but few detainees make it through to a hearing
 - Canadian Mental Health Association BC – important service provider but limited role in systemic advocacy

HEALTH JUSTICE

- Provincial non-profit
- Research, education, and advocacy to improve the laws and policies that govern coercive health care in BC
- Current project is to better support human rights in involuntary mental health and substance use care by reforming BC's *Mental Health Act* – funded by



HEALTH
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Governance
model



Mental Health Act Law Reform Project

- 3 year project – Feb 2020 – Jan 2023
- Interjurisdictional research on the most promising mental health laws and policies around the world
- Engagement with people who have experienced coercive health care, Indigenous organizations, and other stakeholder groups, including family members, service providers, and community organizations
- Advocate for laws and policies that fulfil human rights guarantees, build in transparency and monitoring mechanisms, and are grounded in evidence-based best practices

What's your role as an advocate?

- Building trust with your client
- Professional ethical duties
- Legal duty to make your services accessible

Building trust: supporting choice and control

“When you live on the street long enough, eventually you stop believing in choices. Where you eat, sleep and even socialize is decided for you.”

– Kris Cronk, Megaphone Speakers' Bureau Facilitator and Vendor

Duties as an Advocate

- **Duty to act on client's instructions** – necessarily partisan, must raise every issue and argument that will help advance the client's case
- **Duty of honesty and full candour** – must inform the client of all information that may affect the interests of the client in the matter
- **Duty of confidentiality** – must keep all information confidential acquired in providing services and must not divulge the information unless authorized by the client or required by law
- **Duty of non-discrimination**
 - Responsibility to comply with human rights law in providing legal services
 - When a client's ability to make decisions is impaired because of mental disability, or for some other reason, advocate must, as far as reasonably possible, maintain a normal advocate-client relationship.

Providing services to clients with mental disabilities

What differences, if any, arise in fulfilling your duties as an advocate when representing a client with a mental health issue?

1. Ensuring legal services are accessible may require accommodations
2. Assessing capacity to provide instructions
3. Fulfilling our obligations of advocacy and non-discrimination requires active monitoring of our thinking, attitudes, judgments
 - Eg. client with mental disability is entitled to the same degree of confidentiality as all other clients
 - Eg. what we believe is best for our client vs. what our client instructs

Accessibility of Legal Services

- As a service provider, advocates and the organizations they work for have an obligation under the *Human Rights Code* to provide services in a way that does not discriminate based on aspects of a person's identity
 - Race, colour, ancestry, place of origin, religion, marital status, family status, sex, sexual orientation, gender identity or expression, age, physical or mental disability
- Equal access to services can mean treating people **differently** to remove barriers and ensure meaningful access
- The barriers people experience are often at the systems level (i.e. baked into how we typically approach or structure our organizations and services)

Accessibility of Legal Services

Ask yourself – **and your client** – how can I improve access to my legal services?

- Timing of appointments (timing in relation to substance use, medications etc)
- Missed appointments, lateness
- Explain why you're taking notes/collecting documents, who will see them, confidentiality
- Method of communicating information (in person, phone, in writing, drawing)
- Repetition or putting things in writing
- Language use (and ask if the words you're using are understandable)
- Open ended questions
- Presence of a support person
- Explain proceedings (who sits where, am I supposed to bow, what do I wear, how do I address people)
- Will something make the hearing less stressful (tour of space in advance, video-conference/ screen/ a support person during testimony, clothes, stuffed animal, breaks, food, cigarettes etc.)
- Give space for questions
- Be opened minded about what you can provide!

Can you think of other ways you ensure your services are accessible?

How do you ensure clients feel control and choice in their interactions with you?



Capacity to Provide Instructions

- No such thing as an “incapable person” – law requires capacity assessments are:
 - Context specific: adults may be capable of making some decisions and not others (not all decisions or instructions are the same)
 - Contemporaneous: capacity will change over time and is influenced by many factors (time of day, health, substances, support of others). It can change over the course of a file.
- The way adult communicates with others is not grounds for deciding that she is incapable of understanding.
- It is your decision as an advocate whether your client understands and can provide instructions in that situation. The opinions of others (eg. family, doctors) may be helpful (or unhelpful), but are not determinative.

* **Practice Tip**: talk to your client before reviewing records/speaking to others

Capacity to Provide Instructions

- Key questions:
 - does the client understand the decision that has to be made and appreciate the consequences of the decision?
 - what are the ethical implications of acting or refusing to act?
 - what can I or others do to put the supports in place to enable my client to provide capable instructions?

*** Practice Tip:** A client who needs support to make decisions may benefit from involvement of support person to understand information and convey wishes and preferences when the client wants that person's involvement. BUT, keep track of who your client is.

Identifying our own Competing Values

- Identifying competing values within ourselves and the tension between them
 - E.g. I want to do what I think is best for my client vs I believe in my client's autonomy
- What am I uncomfortable with? What am I pulling away from?
 - Am I recoiling from bizarre thoughts or behaviours?
 - Am I tired or frustrated with my job, or the system?
 - Am I uncomfortable sitting with someone who is suffering where I am powerless to help?
 - Is this client bringing up memories/thoughts/feelings about someone else I have a relationship with (eg. a child, a parent, a friend)?

Getting Involved

- [Lived Experience Experts leadership group](#)
- Indigenous Leadership group
- Stakeholder advisory groups: families and personal supporters, health care providers, non-profit organizations

www.healthjustice.ca

