



BC'S OFFICE OF THE
HUMAN RIGHTS
COMMISSIONER

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Hon. Judy Darcy
Minister of Mental Health & Addictions
Room 346 – Parliament Buildings
Victoria, BC V8V 1X5

Hon. Adrian Dix
Minister of Health
PO Box 9050, Stn Prov Govt.
Victoria BC V8W 9E2

Via email: MH.Minister@gov.bc.ca; HLTH.Minister@gov.bc.ca

July 24, 2020

Dear Minister Darcy & Minister Dix,

I write in regard to Bill 22: *Mental Health Amendment Act*, 2020 currently before the B.C. Legislature. I am concerned that these amendments to the *Mental Health Act* raise serious issues that may be contrary to statutory, constitutional, and international human rights law principles, such as: equality and non-discrimination; the right to life, liberty, and security of the person; duty to consult with Indigenous peoples; and access to justice upon detention.

I share the concerns articulated by the Representative for Children and Youth Jennifer Charlesworth, Chief Coroner Lisa LaPointe, Ombudsperson Jay Chalke, the First Nations Leadership Council, Health Justice and the BC Civil Liberties Association in their letters and statements on this Bill. I echo their recommendations and wish to draw attention to a few specific points of concern in relation to human rights.

I also share the government's deep concern about the opioid crisis in British Columbia and the impact on those most marginalized in our society. I understand this Bill to be motivated by a desire to keep our young people as safe and healthy as possible in the context of a toxic drug supply and rising overdose deaths in our communities. Both supporters and critics of the Bill are clearly concerned with providing greater and more effective supports for young people grappling with mental illness and addiction; unfortunately, this Bill falls short of that mark.

The evidence does not demonstrate that these additional legal changes (which are being introduced without a comprehensive voluntary system of care) will save lives or improve health outcomes; in fact, the evidence demonstrates that the results may be quite the opposite.¹ The potential for detention could cause a reluctance to call for help and therefore lead to greater harm. Furthermore, young people may be at greater risk of relapse and

¹ Andreas Pilarinos, Perry Kendall, Danya Fast, and Kora Debeck (2018), "Secure care: More harm than good." CMAJ 190 (41).



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overdose upon release from hospitals because they leave with lower drug tolerance levels and have no access to wrap-around voluntary services to maintain continuity of care.

As noted in Chief Coroner Lisa Lapointe's letter, there have been "no recommendations supporting involuntary stabilization care for any age group" from their extensive review of deaths due to illicit substance use in the province². Similarly, the Representative for Children and Youth has not recommended involuntary stabilization care in the current context of deeply inadequate voluntary, community-based, accessible services³. This is on the basis of multiple investigations with numerous recommendations on youth mental health- and addiction-related fatalities from each of their Offices. I also understand that the BC Centre on Substance Use was not consulted on these changes and there are no studies validating involuntary stabilization care.

The human rights framework requires policy decisions impacting rights to be based on sound evidence. Constitutional law and principles in Canada – supported by international law protections – guarantee certain protections for those who are detained by the state. Detention cannot happen arbitrarily or without legal recourse for the detained. Detentions are arbitrary if not evidence-based. Moreover, we all have the right to make decisions about our own bodily and psychological integrity, including our health care; denying that right without adequate procedural safeguards and evidence is contrary to human rights protections.

I echo the serious concerns about access to rights-based information and legal advice as articulated by both the Ombudsperson and the Representative for Children and Youth in their recent letters on this Bill. Young people must have access to information about their rights as soon as they are detained and when they recover sufficiently to be able to understand the advice, as well as access to an independent, proactive, and fully funded legal advice service (which should be immediately notified of all admissions to stabilization care). It is disappointing that this Bill is being considered before both: the implementation of an independent rights advice body that government agreed to establish in response to the Ombudsperson's recommendation in his review of adult involuntary mental health detention⁴; and the results of RCY's comprehensive report due in the fall on the relevant issue of the ability for youth to participate and exercise their rights while detained. Finally, meaningful opportunities to challenge detentions must be explored with the Mental Health Review Board.

Substantive equality protections within the Human Rights Code, the Charter of Rights and Freedoms and a number of international law instruments such as the *UN Declaration on the Rights of Indigenous Peoples* all require law makers to examine the potential disproportionate impacts of legal changes to marginalized communities or on the basis of protected grounds as identified in those legal instruments. In this case, while Indigenous youth and, in particular, Indigenous girls, are very likely to be overrepresented among those subjected to involuntary treatment under Bill 22,

² Lisa Lapointe (2020), "Letter to Minister Darcy Re: Bill 22, Mental Health Amendment Act, 2020." Direct Correspondence.

³ Jennifer Charlesworth (2020), "Letter to Minister Darcy Re: Bill 22, Mental Health Amendment Act, 2020." Direct Correspondence.

⁴ The Office of the Ombudsperson (2019), *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act*. Special Report No. 42.



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Indigenous organizations and communities were not adequately and meaningfully consulted on the proposed changes. Youth with lived expertise were also not consulted, which undermines a human rights-based approach to legal change and policy development.

Introducing a system that denies liberties without strong medical support, procedural safeguards, or access to justice runs contrary to constitutional and international law. Introducing a system that denies liberties to Indigenous people disproportionately, without adequate consultation or evidence, undermines our domestic and international commitments to substantive equality.

I urge you to hold off on the introduction of stabilization care until you have:

- (a) properly consulted with Indigenous communities and leadership, as well as child and youth mental health and addiction specialists, human rights experts, and youth with lived expertise;
- (b) developed a robust and accessible community-based system of wrap-around, voluntary, culturally-safe, trauma-informed and evidence-based harm reduction and treatment services; and
- (c) established and funded an independent legal advice service for young people detained under the *Mental Health Act* and implemented other important access to justice safeguards as described above.

I welcome the opportunity to discuss this matter further with you.

Yours truly,

Kasari Govender

Human Rights Commissioner

CC: Daniele Behn Smith, Aboriginal Health Physician Advisor

Allison Bond, Deputy Minister, Children & Family Development

Stephen Brown, Deputy Minister, Ministry of Health

Jay Chalke, Ombudsperson



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Dr. Jennifer Charlesworth, Representative for Children and Youth

Hon. Katrine Conroy, Minister of Children & Family Development

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Cory Heavener, Provincial Director of Child Welfare

Dr. Bonnie Henry, Provincial Health Officer

Diana Juricevic, Chair, Mental Health Review Board

Lisa Lapointe, Chief Coroner

Neilane Mayhew, Deputy Minister, Mental Health & Addictions

MLA Nicholas Simons, Chair, Select Standing Committee on Children and Youth

MLA Michele Stilwell, Deputy Chair, Select Standing Committee on Children and Youth