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B.C. patients launch court challenge over forced psychiatric treatments

By ANDREA WOO

Legal action filed in B.C. Supreme Court argues involuntary therapies violate a person's Charter rights and reinforce stereotypes

Two people who were forced to receive injection medications and electroconvulsive therapy while involuntarily detained for mental-health reasons are challenging the constitutional validity of forced psychiatric treatments.

Under British Columbia's Mental Health Act, a person who is involuntarily detained is deemed to consent to all psychiatric treatment authorized by a director appointed by the health authority. They are presumed to be incapable of giving, refusing or revoking consent to psychiatric treatment, and cannot appoint a substitute decision maker. There is no statutory requirement to assess whether the person is capable of making decisions.

This is in contrast to the B.C. legislation that guides general health care, which states that providers cannot give treatment without consent except in urgent or emergency situations. Further, patients can make directives in advance, or have substitute decision makers.

The legal action, filed on Monday in B.C. Supreme Court, argues that forced treatment violates a person's Charter rights and reinforces harmful stereotypes about people with mental-health issues. The Council of Canadians with Disabilities is also a plaintiff.

Isabel Grant, a professor who specializes in criminal and mental health law at the University of British Columbia's Allard School of Law, called the inability to make one's own decisions under the Mental Health Act a "wide exertion of provincial power" and a clear violation of Charter rights.

"We don't do that in any other context: If you have a physical illness that you're making bad decisions about, we let you make those bad decisions. We don't [enforce] better decisions," she said.

"If you're diabetic and you're refusing to take your medication, we don't jump in and say you have to do this or else we're going to lock you up and make you do this."

The two people named in the civil claim are Louise MacLaren, a 66-year-old retired nurse who lives in Victoria, and a man identified only as D.C., a 24-year-old Harvard University graduate now living in Vancouver.

Ms. MacLaren was diagnosed with bipolar disorder in the mid-1980s, and has been detained as an involuntary patient "from time to time" since then, according to the claim. She was most recently detained in late February, 2012, and has remained an involuntary patient since, although she is permitted to live in the community under the terms of the Mental Health Act.

She has had about 300 rounds of electroconvulsive therapy, according to the claim.

She also must take psychotropic medications as a condition of her release from hospital.

Doctors have not conclusively diagnosed the patient known as D.C. Possible diagnoses include bipolar disorder, schizoaffective disorder and postconcussive syndrome from traumatic brain injury. He was detained as an involuntary patient in July, 2015, after his physician expressed concern, and has remained an involuntary patient since, with the exception of a nine-day period. The claim says health-care providers sometimes injected D.C. with medication using restraints.

Laura Johnston, a lawyer with the Community Legal Assistance Society who is representing the plaintiffs, said both are open to treatment but want it to be on their own terms.

"Forced treatment actually gets in the way of people getting access to treatment because people delay seeking health care services, or [don't seek] health-care services, when they are frightened of losing absolutely every aspect of control over their care," Ms. Johnston said.

Melanie Benard of the Council of Canadians with Disabilities said British Columbia is the only Canadian jurisdiction that has the specific "deemed consent" provision that forgoes an assessment of a person's capacity.

"For the CCD, it's about the right to equality and the right to liberty enshrined in the Canadian Charter and the UN Convention on the Rights of Persons with Disabilities," said Ms. Benard, who is also a lawyer.

"They apply to people with all types of disabilities, including mental disabilities. We feel that the law in its current form discriminates against people with mental disabilities by depriving them of those rights and reinforcing harmful stereotypes that equate mental illness with incapacity."

Reached for comment, the B.C. Ministry of Health said the section of the act in question is intended to help patients who may not understand or realize they need psychiatric care.

"Doctors work to inform patients about their care throughout this process and hospital staff are available to support patients admitted involuntarily and trained to help people resolve health-care concerns," said a statement supplied by ministry spokeswoman Kristy Anderson.

"The goal is to provide patients with the treatment that will help them to transition out of involuntary care. Involuntary patients, a member of their family, or an individual acting for them, always has the right to ask for a second medical opinion on whether the treatment they are receiving is appropriate."

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