



THE CANADIAN
BAR ASSOCIATION
Northwest Territories Branch

July 31, 2014

DELIVERED VIA EMAIL

Jessica Marriott & Natasha Bhogal
Policy, Legislation, and Communications
Department of Health and Social Services
Government of the Northwest Territories

Dear Mesdames;

RE: Proposed new *Mental Health Act*

I write to you on behalf of the Northwest Territories Branch of the Canadian Bar Association (“CBA”). The CBA is a professional, voluntary organization representing approximately 37,000 lawyers, judges, notaries, law professors and law students from across Canada. The CBA promotes fair justice systems, facilitates effective law reform, and is devoted to the elimination of discrimination. A significant part of the CBA’s mandate is to improve the law, advance the administration of justice and improve and promote access to justice.

We thus have a great interest in the Government of the Northwest Territories’ (“GNWT”) proposal to implement a new *Mental Health Act*, and thank you for asking for our comments on the proposed legislation. At some point in their lives, almost everyone in the Northwest Territories is impacted in some way or another by mental health issues. We applaud the GNWT’s attention to amending this important legislation.

Overall, we think that the proposed amendments are a positive step forward in modernizing the Northwest Territories’ mental health legislation. However, we do have three major concerns with the proposed new *Mental Health Act*.

The first concern we have relates to the changes to the voluntary admission provisions. Although we think it is a positive step forward to ensure that patients who voluntarily admit themselves for treatment receive the same rights and protections as involuntary admitted patients, such as access to review boards and protection of mental health records, we have concerns with the proposal to “require” voluntary patients, when first admitted to a mental health facility, to sign a consent form allowing staff to detain the voluntary patient for up to 24 hours. We understand that there should be a procedure in place to address situations where a person voluntarily admits him/herself but following admission, the care provider decides that the person should be involuntarily admitted. However, we do not think that forcing a person to sign away their rights to leave the facility upon admission for 24 hours is an effective means to address this type of situation. In our view, requiring someone to effectively sign away their right to leave upon admission may deter people from choosing to voluntarily admit him/herself and



may thereby prevent persons from coming forward to receive care at an earlier stage of their illness.

The second concern we have is with respect to the transfer during detention provisions of the new *Mental Health Act*. In the second discussion paper, the GNWT proposes including a provision that would require that if an individual requiring care is released, the person who brought the individual to the facility for the initial examination, or another person who has assumed custody of the individual, would be required to arrange and pay for the return of the individual to the place where the individual was apprehended. As is set out in the discussion papers, the reality in the Northwest Territories is that many communities do not have mental health facilities, meaning that if an individual requiring care is admitted to a facility, there is a large chance that the individual would need to be flown out of the community in order to access the facility. If the person who brought the individual requiring care in for treatment would be responsible for flying that individual home, this significant financial cost could prevent that person from bringing an individual in for treatment and could prevent the individual from accessing much needed treatment.

When individuals experience barriers in accessing mental health treatment, an unfortunate side effect is that they may instead come into contact with the justice system. In our respectful view, the new *Mental Health Act* should not contain any provisions that might inadvertently discourage individuals from accessing mental health treatment.

Our final concern is with respect to the use of the word "harm" in the second discussion paper. The proposed provisions respecting involuntary patients contain criteria that could trigger an initial examination. These criteria contain a number of situations where there might be potential for "harm". In our view, the use of the stand-alone word "harm", without a definition of "harm" could prove problematic. In most other jurisdictions, the use of the word "harm" is qualified by the words "serious bodily" or there is a definition of the word "harm" in the legislation. Accordingly, we would encourage the GNWT to consider further defining the word "harm" in the new *Mental Health Act* to ensure that the rights of individuals requiring treatment are better protected.

On the other hand, we think that there are a number of positive proposals for the new *Mental Health Act*. For example, we think that the use of review boards and the expanded use of community treatment orders and community treatment plans will greatly improve the legal rights of individuals requiring mental health treatment.

We would appreciate the opportunity to have the Criminal Law Section of the Northwest Territories Branch of the CBA provide their comments on the proposed amendments, and we are requesting an extension until September 1, 2014 to give the



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Criminal Law section a chance to provide feedback. Please confirm whether or not these submissions would be considered.

We thank you for providing us with the opportunity to comment on the proposed new *Mental Health Act*. If you require anything further from us, please do not hesitate to contact us.

Sincerely,

SANDRA MACKENZIE
PRESIDENT
CANADIAN BAR ASSOCIATION – NT BRANCH