



The Role of Mental Health Legislation

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In Canada, mental health legislation falls under provincial jurisdiction, and as a result, different laws exist in different provinces and territories. Mental health legislation encompasses civil commitment (including involuntary hospitalization and various forms of mandatory outpatient treatment), decision making for mentally incapable individuals, and the protection and disclosure of clinical records.

The need for mental health legislation is based on the fact that some citizens are prevented, by virtue of their mental condition, from making capable decisions, including the decision to autonomously seek treatment. These individuals thus require others, under carefully defined circumstances, to make those decisions on their behalf. The circumstances in which society may assume decision making for a person with mental illness include situations (under society's police powers) where the person is at significant risk of self-harm or of inflicting harm on others and situations (under society's *parens patriae* duty) where the person is unable to adequately care for himself or herself.

Mental health legislation should attempt to strike a balance between a citizen's right to live safely in society and a person's right to liberty and autonomy. It can also be argued that individuals have the right to timely and appropriate mental health treatment. In striving to achieve such a balance, mental health legislation needs to consider current knowledge about

mental illness in an effort to facilitate accepted best clinical practices. The philosophy of legislation should be in keeping with the current legal and clinical notions of least restrictive, least intrusive and least onerous interventions that are necessary to enable persons with mental illness to participate meaningfully in our free and democratic society. Legislation should be written so that it promotes the delivery of clinical care in community settings where that is possible. In Canada, legislation must respect and be compatible with the Canadian Charter of Rights and Freedoms. Importantly, mental health acts must respect human rights and incorporate proper procedural safeguards for persons subject to such provisions.

Psychiatrists need to be thoroughly familiar with the mental health legislation of the province or territory in which they practise, including the relevant statutory criteria, the cogency of evidence necessary to satisfy the civil standard of proof and the relevant case law related to civil mental health matters. This knowledge will allow psychiatrists to properly execute their duties concerning the various aspects of mental health legislation with greater clarity and with the highest regard for their responsibilities toward patients and toward society.

References

1. Robertson G. *Mental disability and the law in Canada*. 2nd ed. Ottawa (ON): Carswell Publishing; 1994.