

May 12, 2020

Via email

Dr. Bonnie Henry
Provincial Health Officer
4th Floor, 1515 Blanshard Street
Victoria, BC V8W 9P4

Hon. Adrian Dix
Minister of Health
Room 337 Parliament Buildings
Victoria, BC V8V 1X4

Hon. Judy Darcy
Minister of Mental Health and Addictions
Room 346 Parliament Buildings
Victoria, BC V8V 1X4

Dear Dr. Henry and Ministers,

Re: Protecting Involuntary *Mental Health Act* Patients and Staff During COVID-19

We write out of deep concern for the thousands of people who are involuntarily detained under British Columbia's *Mental Health Act* and the staff who provide them with services. We ask that information be made publicly available on the infection rates in psychiatric settings to date and the provincial policies that are in place to address the safety and wellbeing of patients and staff. Our recommendations regarding outstanding risks faced by people in psychiatric settings that would benefit from coordinated provincial policy are found at the end of this letter.

People detained in psychiatric settings are exceptionally vulnerable during the COVID-19 pandemic. The *Mental Health Act* prevents involuntary patients from leaving the hospital or facility and they are "during detention, subject to the direction and discipline" of staff.ⁱ Because the *Mental Health Act* has not been reviewed to bring it in line with modern human rights principles, there are very few safeguards for involuntary patients. Their living conditions, ward/room placements, ability to physically distance, restraints (environmental, chemical, and mechanical), and access to communication methods are completely controlled by the facility.

There have been staggering COVID-19 outbreaks reported in psychiatric hospitals and facilities worldwide. In an April 29, 2020 statement, the Office of the United Nations High Commissioner for Human Rights describes "overwhelming numbers of deaths in residential care homes and psychiatric facilities."ⁱⁱ This news is particularly alarming in this province,

as British Columbia has the highest hospitalization rates in Canada due to mental illness and substance use.ⁱⁱⁱ

The independent care watchdog in England has reported that deaths have doubled among patients who are under *Mental Health Act* due to COVID-19.^{iv} In the United States at least 63 psychiatric facilities have reported outbreaks, with thousands of patients and staff infected.^v In South Korea, all but two patients in a psychiatric ward of over 100 contracted COVID-19. The ward was locked down and it has been reported that those without confirmed positive COVID-19 diagnoses were kept with those with confirmed positive diagnoses. In the aftermath, a panel of doctors called the situation a “medical disaster”, with a leading pulmonologist observing that the inpatients should never have been locked in the same environment that got them infected.^{vi}

People with mental health issues in Canada are more likely to have negative health outcomes from the virus because they experience serious health inequities. They are at above-average risk for physical health issues, including heart disease and chronic respiratory issues, which increases the likelihood of experiencing serious symptoms from COVID-19 that may threaten their health or their lives.^{vii} Further, some medical experts have pointed to the potential risk that some antipsychotic medications may pose to people with COVID-19 due to side effects of impaired swallowing, hypersalivation, and sedation, which worsen during the immune response.^{viii}

In addition to these health inequities, mental health issues are also not experienced equally and often reflect intersecting forms of inequities. Indigenous people experience higher rates of mental health issues as a result of complex and intergenerational trauma caused by decades of colonialism, oppression, and discrimination, which continue to this day.^{ix} Due to the systemic violence and disenfranchisement that Indigenous people continue to experience, a disproportionate number live below the poverty line. People living in poverty face more barriers to accessing mental health supports and are also more likely to experience repeated hospitalization for mental health issues.^x

It is critical during this time that there is transparent information about outbreaks in psychiatric wards and facilities in British Columbia and the provincial policies that are in place to address the safety and wellbeing of patients and staff. The Centre for Addiction and Mental Health (“CAMH”) in Toronto has been an exemplary leader in ensuring this type of transparency and we ask for similar communication on the status of infection rates in psychiatric settings in British Columbia.

CAMH is Canada's largest mental health teaching hospital, where numerous people are involuntarily detained for mental health and substance use issues. CAMH describes itself as “committed to transparency and communication with the community that we serve” during the pandemic and to that end has been publishing daily updates on the status of people with COVID-19 and actions taken.^{xi} CAMH has published daily rates on the number of patients who have received a positive COVID-19 diagnosis as well as the number that have resolved, the number of staff with a positive COVID-19 diagnosis as well as the number that have resolved, the number of patient deaths, and the specific units where a

confirmed COVID-19 outbreak has occurred. This level of communication has provided much needed transparency and reassurance, with members of the community organizing a drive-by parade on April 24, 2020 with balloons and signs in a show of support for patients and staff.

We further ask that coordinated provincial policies established to address the safety and wellbeing of patients and staff in psychiatric settings be made publicly available. The first wave of COVID-19 in BC is concluding, but it is clear that revised physical distancing and other public health measures will be in place for the near future. Those restrictions will continue to impact people detained in psychiatric settings who are at elevated risk.

British Columbia's system of regional health authorities and dispersed approach to involuntary mental health care means that there are over 70 facilities in which a patient can be detained under the *Mental Health Act*.^{xii} There are also many more mental health teams that supervise involuntary patients on leave who are compelled to live in various settings by conditions of their leave. Each ward, unit, facility, mental health team, or health authority may respond differently to the current pandemic, increasing the risk of a fractured approach across the province.

A coordinated provincial policy to mitigate the elevated risk posed by psychiatric settings and *Mental Health Act* restrictions should address at least the following issues:

- Ensuring that psychiatric patients who test positive for COVID-19 are being cared for in separate locations than psychiatric patients who do not have a confirmed positive COVID-19 test in accordance with recommendations from the World Health Organization.^{xiii}
- Ensuring that psychiatric patients are afforded the same opportunities to physically distance that all patients are given, which may involve placing psychiatric patients in locations in the facility other than those traditionally used to detain psychiatric patients.
- Prioritising testing and promoting preventative measures in psychiatric settings, such as identification of the circumstances under which staff may or may not work on different wards, units, facilities, and mental health teams to mitigate the risk that the virus will be brought into those settings.
- Ensuring that patients are not solitarily confined to seclusion rooms / secure rooms as a physical distancing measure. The Office of the United Nations High Commissioner for Human Rights cautions that people confined to institutional settings face greater risks of human rights violations in times of pandemic, such as being subject to restraints or isolation.^{xiv} According to the College of Family Physicians of Canada, the negative consequences of sensory deprivation and isolation inherent in solitary confinement can be felt within 48 hours, which includes the onset of mental illness, exacerbation of pre-existing mental illness, and the development or worsening of physical symptoms.^{xv} Seclusion rooms / secure rooms are stark, small, windowless, and devoid of engagement – no patient should be confined under such circumstances due to a COVID-19 diagnosis.

- Safeguarding the human rights of people detained in psychiatric settings, including non-discrimination, the right to free and informed consent, and the right to any accommodations necessary to ensure equitable access to health care.
- Ensuring access to justice is facilitated. If legal advocates and lawyers are no longer permitted in psychiatric settings where people are detained, facilities must provide access to alternate methods of communication, including phones and other devices with internet that permit access to information, calls, videocalls. People must be guaranteed privacy when speaking with their legal advocates and lawyers to protect solicitor-client privilege.
- Promoting transparency in changes or directives related to discharge planning in response to the pandemic, including steps to ensure that adequate resources are in place in the community to support people with mental health and substance use related health issues and people with disabilities to enable transitions out of psychiatric settings. This includes community-based health services, safe housing, and adequate income supports.
- Ensuring consultation with people with lived and living experience of being detained in psychiatric settings or subject to *Mental Health Act* restrictions, as well as the health care providers, advocates, and communities who are connected to them, when developing policies.

We look forward to learning more about the steps that British Columbia is taking to ensure that people detained in psychiatric facilities or subject to *Mental Health Act* restrictions and the staff who work in those settings benefit from a coordinated public health response.

Sincerely,



Kendra Milne
Executive Director



Laura Johnston
Legal Director

cc: Kasari Govender, British Columbia Human Rights Commissioner
Dr. Danièle Behn Smith, Deputy Provincial Health Officer

Co-signatories:

Access Pro Bono Society

Atira Women’s Resource Society

BC Aboriginal Network on Disability
Society

BC Association of Aboriginal Friendship Centres

BC Civil Liberties Association

Canadian Mental Health Association BC Division

Canadian Mental Health Association Kelowna

Canadian Mental Health Association Kootenays

Canadian Mental Health Association North West Vancouver

Canadian Mental Health Association Shuswap-Revelstoke

Canadian Mental Health Association South Cariboo

Canadian Mental Health Association Vancouver Fraser

Canadian Mental Health Association Vernon

Community Legal Assistance Society

Disability Alliance BC

Law Union of BC

Pivot Legal Society

Rise Women's Legal Centre

Together Against Poverty Society

Union of BC Indian Chiefs

Watari Counselling and Support Services Society

West Coast LEAF

ⁱ *Mental Health Act*, RSBC 1996, c 288, s. 32

ⁱⁱ Office of the United Nations High Commissioner for Human Rights, COVID-19 AND THE RIGHTS OF PERSONS WITH DISABILITIES: GUIDANCE, 29 April 2020, online: https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf

ⁱⁱⁱ A Pathway to Hope: A roadmap for making mental health and addictions care better for people in British Columbia, British Columbia Ministry of Mental Health and Addictions, June 26, 2019, online: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/initiatives-plans-strategies/mental-health-and-addictions-strategy/bcmentalhealthroadmap_2019web-5.pdf

^{iv} Shaun Lintern, "Coronavirus: Deaths in mental health hospitals double as Covid-19 spreads" 8 May 2020 The Independent, online: <https://www.independent.co.uk/news/health/coronavirus-mental-health-hospitals-deaths-cases-nhs-a9505066.html>

^v Kit Ramgopal, "Coronavirus in a psychiatric hospital: 'It's the worst of all worlds'" 20 April 2020 NBC News, online: <https://www.nbcnews.com/health/mental-health/coronavirus-psychiatric-hospital-it-s-worst-all-worlds-n1184266>

^{vi} Min Joo Kim, "Coronavirus in South Korean psychiatric wards became a 'medical disaster' when coronavirus hit" 29 February 2020 The Washington Post, online: https://www.washingtonpost.com/world/asia_pacific/how-a-south-korean-psychiatric-ward-became-a-medical-disaster-when-coronavirus-hit/2020/02/29/fe8f6e40-5897-11ea-8efd-0f904bdd8057_story.htm

^{vii} Canadian Mental Health Association, "The Relationship between Mental Health, Mental Illness and Chronic Physical Conditions" December 2008, online: <https://ontario.cmha.ca/documents/the-relationship-between-mental-health-mental-illness-and-chronic-physical-conditions/>

^{viii} Nicole Kozloff, Benoit H Mulsant, Vicky Stergiopoulos, Aristotle N Voineskos, "The COVID-19 Global Pandemic: Implications for People With Schizophrenia and Related Disorders" 28 April 2020, *Schizophrenia Bulletin*, online:

<https://academic.oup.com/schizophreniabulletin/advance-article/doi/10.1093/schbul/sbaa051/5826166>

^{ix} *Reclaiming Power and Place: Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a* at page 425.

^x Canadian Institute for Health Information, "Health Indicators Interactive Tool", online:

<https://yourhealthsystem.cihi.ca/epub/> (searched using most recent year available, by province, for "30-day Readmission for Mental Illness" and "Patients with Repeat Hospitalizations for Mental Illness").

^{xi} Centre for Addiction and Mental Health, COVID-19 Updates, online: <https://www.camh.ca/en/camh-news-and-stories/novel-coronavirus-update>

^{xii} DESIGNATIONS UNDER THE MENTAL HEALTH ACT [s 3(1), (2)] Made by Ministerial Order M 393/2016, online:

<https://www.health.gov.bc.ca/library/publications/year/2018/facilities-designated-mental-health-act.pdf>

^{xiii} World Health Organization, "Infection Prevention and Control (IPC) for Novel Coronavirus (COVID-19)" online: <https://openwho.org/courses/COVID-19-IPC-EN>

^{xiv} See endnote ii.

^{xv} The College of Family Physicians of Canada, "Position Statement on Solitary Confinement", 7 August 2016, online:

https://portal.cfpc.ca/resourcesdocs/uploadedFiles/Directories/Committees_List/Solitary%20Confinement_EN_Prison%20Health.pdf