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c 37 Mental Health Amendment Act, 1987

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CHAPTER 37

An Act to amend the Mental Health Act

Assented to June 29th, 1987

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Mental Health Act*, being chapter 262 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

(ba) “informal patient” means a person who is a patient in a psychiatric facility under the authority of a parent, guardian or committee of the person appointed for the patient under the *Mental Incompetency Act*.

R.S.O. 1980,
c. 264

(2) Clause 1 (j) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following clause:

(sa) “related medical treatment” means medical treatment or procedures necessary for,

(i) the safe and effective administration of the psychiatric treatment, or

(ii) the control of the unwanted effects of the psychiatric treatment.

2. The said Act is amended by adding thereto the following sections:

1a.—(1) A person may give or refuse consent on behalf of a patient who is not mentally competent if the person has attained the age of sixteen years, is apparently mentally competent, is available and willing to give or refuse consent and is described in one of the following paragraphs:

Substitute
consent

R.S.O. 1980,
c. 264

1. The committee of the person appointed for the patient under the *Mental Incompetency Act*.
2. The patient's representative appointed under section 1b or 1c.
3. The person to whom the patient is married or the person of the opposite sex with whom the patient is living outside marriage in a conjugal relationship or was living outside marriage in a conjugal relationship immediately before being admitted to the psychiatric facility, if in the case of unmarried persons they,

i. have cohabited for at least one year,

ii. are together the parents of a child, or

iii. have together entered into a cohabitation agreement under section 53 of the *Family Law Act, 1986*.

1986, c. 4

4. A child of the patient.
5. A parent of the patient or a person who has lawful custody of the patient.
6. A brother or sister of the patient.
7. Any other next of kin of the patient.
8. The Official Guardian.

Refusal

(2) If a person in a category in subsection (1) refuses consent on the patient's behalf, the consent of a person in a subsequent category is not valid.

Preference

(3) If two or more persons who are described in different paragraphs of subsection (1) claim the authority to give or refuse consent on behalf of a patient, the claim of the person who is described in the paragraph occurring first in that subsection prevails.

Conflict

(4) If two or more persons who are described in the same paragraph of subsection (1) claim the authority to give or refuse consent on behalf of a patient, if they disagree about whether to give or refuse consent and if their claims would prevail over any other claims under subsection (3), the refusal prevails.

(5) A person described in paragraph 3, 4, 5, 6 or 7 of subsection (1) may not give or refuse consent on a patient's behalf unless the person makes a statement in writing certifying,

Consent
by
relative

- (a) the person's relationship to the patient;
- (b) that the person has been in personal contact with the patient over the preceding twelve month period;
- (c) that the person is willing to assume the responsibility for consent or refusing consent; and
- (d) that the person is not aware of any other person described in the same paragraph or in a previous paragraph who claims the authority to give or refuse consent.

(6) A person authorized to give or refuse consent on behalf of a patient shall do so in accordance with the wishes of the patient if the person knows that the patient expressed any such wishes when apparently mentally competent and in accordance with the best interests of the patient if the person does not know of any such wishes.

Basis for
substitute
consent

(7) A person who seeks another person's consent on a patient's behalf is entitled to rely on the accuracy of the other person's written statement under subsection (5), unless it is not reasonable to do so.

Reliance
on
statement

(8) A person seeking consent on behalf of a patient is not liable for failing to request the consent of another person entitled to give or refuse consent on behalf of the patient if, after reasonable inquiries, the person did not find the other person.

Reasonable
inquiries

1b.—(1) A person who has attained the age of sixteen years and is mentally competent to do so has the right to appoint a representative who has attained the age of sixteen years and is apparently mentally competent to give or refuse consent on behalf of the person for the purpose of paragraph 2 of subsection 1a (1).

Patient's
representative

(2) An appointment of a representative shall be made in writing in the presence of a witness.

Appointment
in writing

(3) An appointment may be subject to such conditions and restrictions, if any, as are contained in it and not inconsistent with this Act.

Conditions

Notice by
physician

(4) The attending physician shall inform the patient in writing of the patient's right under subsection (1) within forty-eight hours after the patient is admitted or registered to the psychiatric facility.

Transitional

(5) As soon as practicable, the officer in charge shall inform all persons who are patients of the facility at the time of the coming into force of this section in writing of their rights under subsection (1).

Contents
of notice

(6) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Appointment
of repre-
sentative

(7) If a patient gives or transmits to the officer in charge a statement in writing appointing a representative, the officer in charge shall transmit the statement to the representative forthwith.

Revocation

(8) A person who has appointed a representative may revoke in writing the appointment and may appoint in writing a new representative while mentally competent to do so, and subsection (7) applies with necessary modifications in respect of the revocation and new appointment.

Board
appointed
representative

1c.—(1) A patient who has attained the age of sixteen years, is not mentally competent to appoint a representative and has not named a representative under section 1b, has the right to apply to the board for the appointment of a representative requested by the patient to give or refuse consent on behalf of the patient for the purpose of paragraph 2 of subsection 1a (1).

Notice by
physician

(2) An attending physician who determines that a patient is not competent to appoint a representative shall as soon as practicable inform the patient in writing of the patient's right under subsection (1).

Contents of
notice

(3) The notice shall be in the form prescribed by the regulations and shall inform the patient of the powers and responsibilities of a representative under this Act.

Parties

(4) The patient, the person proposed as a representative, the person who would be authorized under subsection 1a (1) to consent on behalf of the patient if no order is made by the board under this section and such other persons as the board may specify are parties to a proceeding before the board under this section.

(5) The board shall appoint a person as a representative for a patient only if the patient approves of the appointment and the board is satisfied that the person, Appointment

- (a) has attained the age of sixteen years;
- (b) is apparently mentally competent to give or refuse consent on behalf of the patient;
- (c) consents to the appointment; and
- (d) in the board's opinion it is in the patient's interest to appoint the person as a representative.

(6) The board may appoint a person other than the person requested by the patient to be the patient's representative. Idem

(7) An appointment made by the board may be subject to such conditions and restrictions, if any, as are approved by the patient, set out in the appointment and not inconsistent with this Act. Conditions

1d.—(1) A person who has not attained sixteen years of age is presumed to be not mentally competent to consent for the purposes of this Act. Person sixteen years of age

(2) The presumption that a person is not mentally competent is subject to a determination by the attending physician, the review board or a court, pursuant to subsection 29a (14), section 35 or 35b, that the person is mentally competent. Limitation

3. Subsection 15 (3) of the said Act is repealed.

4.—(1) Clause 29 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) “patient” includes former patient, out-patient, former out-patient and anyone who is or has been detained in a psychiatric facility.

(2) Clause 29 (3) (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has attained the age of sixteen years and” in the first and second lines.

(3) Clause 29 (3) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the first and second lines.

(4) The said clause 29 (3) (b) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(5) Clause 29 (3) (e) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “has not attained the age of sixteen years or” in the second line.

(6) The said clause 29 (3) (e) is further amended by striking out “nearest relative of the patient” in the third and fourth lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(7) Subsection 29 (3a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed.

(8) Clause 29 (9) (b) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the third line and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(9) Clause 29 (9) (c) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by striking out “nearest relative of the patient” in the sixth and seventh lines and inserting in lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

5.—(1) Subsection 29a (1) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Patient access
to clinical
record

(1) A patient who is mentally competent is entitled to examine and copy at the patient's own expense the clinical record of the patient or a copy of the record.

(2) Subsection 29a (14) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after “determined” in the first line “or presumed”.

(3) Subsection 29a (16) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “has not attained the age of sixteen years or” in the first and second lines and by striking out “patient's nearest relative” in the second and third lines and inserting in

lieu thereof “person authorized under section 1a to consent on behalf of the patient”.

(4) Subsection 29a (17) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “patient’s nearest relative” in the third line and inserting in lieu thereof “person”.

6. Section 30a of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 66 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1c) The attending physician of a person who is the subject of an application for assessment under section 9 or of an order under section 26 shall give or transmit to the person written notice of the application or order.

Notice of application or order

(1d) A physician who applies to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to a patient shall give or transmit written notice of the application to the patient and to the area director for the area, in accordance with the *Legal Aid Act*, in which the psychiatric facility is located.

Notice of application for order

R.S.O. 1980, c. 234

(1e) The notices specified in subsections (1), (1b) and (1c), excluding the notice to the area director, shall inform the patient or person,

Information

- (a) of the reasons for the detention; and
- (b) that he or she has the right to retain and instruct counsel without delay.

7.—(1) Subsection 31 (2) of the said Act is amended by adding at the commencement thereof “In addition to the applications under subsection (4)”.

(2) Section 31 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsection:

(5) A waiver by an involuntary patient of an application or of the right to an application mentioned in subsection (4) is a nullity.

Waiver

8. Section 32 of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Hearing
deemed
abandoned

32. Except as provided in subsection 33f (1e) or (1j), where an appeal is taken against a certificate of involuntary admission or a certificate of renewal and the time period for the certificate under subsection 14 (4) expires before a decision is rendered, the appeal shall be deemed to be abandoned whether or not the certificate is renewed.

9. Section 32a of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Review of
admission or
renewal

32a.—(1) On the hearing of an application, the review board shall promptly review the patient's status to determine whether or not the prerequisites set out in this Act for admission as an involuntary patient continue to be met at the time of the hearing of the application.

Confirming
order

(2) The review board by order may confirm the patient's status as an involuntary patient if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were met at the time of the hearing of the application.

Rescinding
order

(3) The review board by order shall rescind the certificate if the review board determines that the prerequisites set out in this Act for admission as an involuntary patient were not met at the time of the hearing of the application.

Application
of order

(4) An order of the review board confirming or rescinding a certificate applies to the certificate of involuntary admission or the certificate of renewal in force immediately before the making of the order.

10.—(1) Subsection 33f (1d) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by inserting after "days" in the fifth line "excluding Saturday and holidays".

(2) Subsection 33f (1e) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

Extension of
certificate for
appeal

(1e) Where, before a certificate of involuntary admission, a certificate of renewal or an extension of a certificate expires, a party to the appeal other than the patient or the person acting on the patient's behalf applies to the court for an extension of the certificate beyond the time period for the certificate under subsection 14 (4), the court may by order extend the effectiveness of the certificate.

(3) Subsection 33f (1f) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:

- (d) until the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5),

(4) Section 33f of the said Act, as enacted by the Revised Statutes of Ontario, 1980, chapter 262, section 67 and amended by the Statutes of Ontario, 1986, chapter 64, section 33, is further amended by adding thereto the following subsections:

(1j) Where an appeal is taken from a decision of the review board to confirm a certificate of involuntary admission or a certificate of renewal, the certificate is effective until,

Effectiveness
of certificate

- (a) the certificate is confirmed or rescinded by the court;
- (b) the certificate is rescinded by the attending physician;
- (c) forty-eight hours after notice is given to the attending physician that the party appealing has withdrawn the appeal; or
- (d) the attending physician confirms under subsection (1k) that the patient does not meet the criteria set out in subsection 14 (5).

(1k) Notwithstanding subsections (1) to (1i), the attending physician shall examine the patient at the intervals that would have applied under section 14 and shall complete and file with the officer in charge a statement in writing as to whether or not the patient meets the criteria set out in subsection 14 (5).

Examination

11. Section 35 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 64, section 33, is repealed and the following substituted therefor:

35.—(1) In this section and in sections 35a, 35b and 35c,

Interpretation

- (a) “electroconvulsive therapy” means the procedure for the treatment of certain mental disorders that

induces, by electrical stimulation of the brain, a series of generalized convulsions;

- (b) “having the ability to understand the subject matter in respect of which consent is requested” in the definition of “mentally competent” means having the ability to understand the nature of the illness for which treatment is proposed and the treatment proposed; and
- (c) “psychosurgery” means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Consent
to
treatment

(2) Psychiatric and other related medical treatment shall not be given to a patient,

- (a) where the patient is mentally competent, without the voluntary, informed consent of the patient;
- (b) where the patient is not mentally competent,
 - (i) without the consent of a person authorized by section 1a to consent on behalf of the patient,
 - (ii) unless the review board has made an order authorizing the giving of the specified psychiatric and other related medical treatment, or
 - (iii) unless a physician certifies in writing that there is imminent and serious danger to the life, a limb or a vital organ of the patient requiring immediate treatment and the physician believes that delay in obtaining consent would endanger the life, a limb or a vital organ of the patient.

Restriction

(3) Subclause (2) (b) (iii) only authorizes the giving of such treatment as is necessary to preserve the life, a limb or a vital organ of the patient.

(4) The consent to psychiatric and other related medical treatment, Psycho-
surgery

- (a) of an involuntary patient; or
- (b) of a person authorized by this Act to consent on behalf of a patient,

does not include and shall not be deemed to include psychosurgery.

(5) A person authorized to give or refuse consent on behalf of a patient shall consider the following factors to determine whether a specified psychiatric treatment and other related medical treatment are in the best interests of a patient, Best
interests

- (a) whether the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) whether the mental condition of the patient will improve or is likely to improve without the specified psychiatric treatment;
- (c) whether the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) whether the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

12. The said Act is further amended by renumbering section 35a, as enacted by the Statutes of Ontario, 1986, chapter 64, section 33, as section 35d and by adding thereto the following sections:

35a.—(1) The attending physician of an involuntary patient may apply to the review board for an order authorizing the giving of specified psychiatric and other related medical treatment to the patient where the patient is not mentally competent, Application
to review
board

- (a) if a person authorized under section 1a to consent to such treatment on the patient's behalf has refused to consent; or
- (b) under the circumstances described in subsection 1a (4).

Material on
application

(2) The review board shall not consider an application unless it is accompanied by statements signed by the attending physician and a psychiatrist who is not a member of the medical staff of the psychiatric facility, each stating that they have examined the patient and that they are of the opinion that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

Reasons
for
opinions

(3) Each of the opinions in the statements described in subsection (2) shall be supported with reasons.

Basis for
decision

(4) The review board by order may authorize the giving of the specified psychiatric and other related medical treatment if it is satisfied that,

- (a) the mental condition of the patient will be or is likely to be substantially improved by the specified psychiatric treatment;
- (b) the mental condition of the patient will not improve or is not likely to improve without the specified psychiatric treatment;
- (c) the anticipated benefit from the specified psychiatric treatment and other related medical treatment outweighs the risk of harm to the patient; and
- (d) the specified psychiatric treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

Terms and
conditions

(5) An order may include terms and conditions and shall specify the period of time during which it is effective.

(6) No order of the board is or shall be deemed to be authority to perform psychosurgery or to administer electroconvulsive therapy. No psychosurgery, E.C.T.

(7) The attending physician, the patient and such other persons as the review board may specify are parties to the proceedings before the review board. Parties

(8) Where the patient is not mentally competent, Idem

(a) the person authorized under section 1a to consent on the patient's behalf; or

(b) under the circumstances described in subsection 1a (4), all of the persons described therein,

are also parties to the proceedings.

(9) The officer in charge shall notify the Official Guardian forthwith after an application is made under this section or section 35b in respect of a patient determined to be not mentally competent to consent to psychiatric and other related medical treatment where it appears to the officer in charge that the patient will not be represented at the forthcoming hearing. Notice to Official Guardian

(10) Upon receiving a notice under subsection (9), the Official Guardian shall represent the patient at the hearing of the application unless the Official Guardian is satisfied that another person will represent the patient. Official Guardian to ensure patient represented

(11) Where a party appeals an order authorizing the providing of specified psychiatric and other related medical treatment or a specified course of psychiatric and other related medical treatment to a patient, the treatment or course of treatment shall not be provided pending the outcome of the appeal, unless otherwise ordered by a judge of the court appealed to. Treatment pending appeal

(12) Sections 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1). Procedure

35b.—(1) A patient determined or presumed to be not mentally competent for the purpose of section 35 may apply in the prescribed form to the review board to inquire into whether the patient is not mentally competent. Application for review of patient determined incompetent

(2) If an application is made under subsection (1), the proposed psychiatric treatment shall not be given until the matter Idem

is determined by the review board or, where the patient appeals its decision, until the matter is finally determined, unless otherwise ordered by a judge of the court appealed to.

Idem (3) Sections 33, 33a, 33b, 33c, 33d, 33e and 33f apply with necessary modifications to an application under subsection (1).

Treatment
for persons
detained
under
R.S.C. 1970,
c. C-34

35c.—(1) Sections 35 and 35b apply with necessary modifications to a person who is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada), as if the person were an involuntary patient.

Idem (2) Section 35a applies with necessary modifications to a person where the review board is satisfied that the person,

R.S.C. 1970,
c. C-34 (a) is remanded or detained in a psychiatric facility pursuant to the *Criminal Code* (Canada); and

(b) is suffering from mental disorder of a nature or quality that likely would result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

if the person did not remain in the custody of a psychiatric facility,

as if the person were an involuntary patient.

Commence-
ment

13. This Act comes into force on the day it receives Royal Assent.

Short title

14. The short title of this Act is the *Mental Health Amendment Act, 1987*.