

SEP 12 2015



S=168364

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

Between

Mary Louise MacLaren, D.C., and
Council of Canadians with Disabilities

Plaintiffs

and

Attorney General of British Columbia

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

PART 1: STATEMENT OF FACTS

A) Overview

1. This claim challenges the constitutionality of British Columbia's mental health legislation, which deprives all involuntary patients — including patients living in the community and those actually detained — of the right to give, refuse, or revoke consent to psychiatric treatment, regardless of those patients' actual capability to do so. British Columbia's legislation allows capable adults to be forcibly administered psychiatric treatment, including psychotropic medication or electroconvulsive therapy, against their will. The legislation further deprives those adults of the right to have psychiatric treatment decisions made by a substitute decision maker, such as a representative, friend, or family member. Involuntary patients are deprived of the health care consent rights and protections enjoyed by others in society. Most fundamentally, they are deprived of the right to control what is done to their own bodies.

B) Introduction to the Parties and the Impugned Legislation

The Parties

2. The plaintiff Mary Louise MacLaren, age 66, is a retired nurse who lives in Victoria, British Columbia. Ms. MacLaren is currently a patient as defined in section 1 of the *Mental Health Act*, R.S.B.C. 1996, c. 288 (the "*Mental Health Act*"), having been involuntarily admitted under section 22 of the *Mental Health Act* and subsequently released to live in the community on leave under section 37 of the *Mental Health Act*.
3. The plaintiff D.C., age 24, is a student who lives in Vancouver, British Columbia. D.C. is currently a patient as defined in section 1 of the *Mental Health Act*, having been involuntarily admitted under section 22 of the *Mental Health Act* and subsequently released to live in the community on leave under section 37 of the *Mental Health Act*.
4. The plaintiff Council of Canadians with Disabilities ("CCD") is a not-for-profit society incorporated under the laws of Canada with a head office at 909 – 294 Portage Avenue in Winnipeg, Manitoba.
5. The defendant Attorney General of British Columbia has an address for service at 1001 Douglas Street, Victoria, British Columbia, V8W 2C5.

Definitions

6. In this notice of civil claim, the following terms have the following meanings, unless the context indicates otherwise:

(a) the “Impugned Provisions” are

- i. subsection 31(1) of the *Mental Health Act*;
- ii. paragraphs 2(b) and (c) of the *Health Care (Consent) and Care Facility (Admission) Act*, R.S.B.C. 1996, c. 181 (the “*Health Care (Consent) and Care Facility (Admission) Act*”); and
- iii. paragraphs 11(1)(b) and (c) of the *Representation Agreement Act*, R.S.B.C. 1996, c. 405 (the “*Representation Agreement Act*”).

(b) an “Involuntary Patient” is a patient who is detained in a designated facility under section 22, 28, 29, 30 or 42 of the *Mental Health Act*, or who is released on leave or is transferred to an approved home under section 37 or 38 of the *Mental Health Act*.

(c) “Forced Psychiatric Treatment” is psychiatric treatment, or any procedure necessarily related to the provision of psychiatric treatment, that is administered to an Involuntary Patient and deemed to be given with the consent of the Involuntary Patient pursuant to subsection 31(1) of the *Mental Health Act*.

(d) a “Substitute Decision Maker” is a representative authorized to help an adult make health care decisions or to make health care decisions on the adult’s behalf under a representation agreement made pursuant to the *Representation Agreement Act*, a temporary substitute decision maker chosen by a health care provider pursuant to the *Health Care (Consent) and Care Facility (Admission) Act*, or a personal guardian appointed by the Supreme Court of British Columbia pursuant to the *Patients Property Act*, R.S.B.C. 1996, c. 349 (the “*Patients Property Act*”).

Overview of Health Care Consent Rights in British Columbia

7. In British Columbia, every adult is presumed to be capable of giving, refusing, or revoking consent to health care: *Health Care (Consent) and Care Facility (Admission) Act*, section 3; *Representation Agreement Act*, section 3.

8. Health care providers must not provide health care without obtaining the adult’s consent, subject to certain exceptions: *Health Care (Consent) and Care Facility (Admission) Act*, section 5.

9. When a patient is found incapable of giving, refusing, or revoking consent to health care, health care providers must seek consent to provide health care from a Substitute Decision Maker: *Health Care (Consent) and Care Facility (Admission) Act*, sections 11 and 16.

10. By way of a representation agreement made pursuant to the *Representation Agreement Act*, an adult may appoint an authorized representative to support the adult with health care decisions or make health care decisions on her or his behalf in the event that she or he is found incapable. The Supreme Court of British Columbia may appoint a personal guardian to make health care decisions on an adult's behalf pursuant to the *Patients Property Act*.
11. Health care providers must choose a temporary substitute decision maker to make a health care decision for an adult found incapable who does not have an authorized representative or personal guardian. If no family member or friend is available and qualified to act as a temporary substitute decision maker, an employee of the Public Guardian and Trustee must make the health care decision: *Health Care (Consent) and Care Facility (Admission) Act*, section 16.

The Impugned Provisions

12. Pursuant to subsection 31(1) of the *Mental Health Act*, every Involuntary Patient is deemed to consent to all psychiatric treatment:

31(1) If a patient is detained in a designated facility under section 22, 28, 29, 30 or 42 or is released on leave or is transferred to an approved home under section 37 or 38, treatment authorized by the director is deemed to be given with the consent of the patient.
13. Involuntary Patients are not presumed to be capable of giving, refusing, or revoking consent to psychiatric treatment.
14. There is no statutory requirement to assess whether an Involuntary Patient is capable of giving, refusing, or revoking consent to psychiatric treatment before administering Forced Psychiatric Treatment.
15. Paragraphs 11(1)(b) and (c) of the *Representation Agreement Act* prohibit Involuntary Patients from authorizing a representative to refuse consent to psychiatric treatment:

11(1) Despite sections 7 (1) (c) and 9, an adult may not authorize a representative to refuse consent to

...

(b) the provision of professional services, care or treatment under the *Mental Health Act* if the adult is detained in a designated facility under section 22, 28, 29, 30 or 42 of that Act, or

(c) the provision of professional services, care or treatment under the *Mental Health Act* if the adult is released on leave or transferred to an approved home under section 37 or 38 of that Act.

...

16. Paragraphs 2(b) and (c) of the *Health Care (Consent) and Care Facility (Admission) Act* deprive Involuntary Patients of the rights and protections set out in that Act in relation to psychiatric care or treatment, including the right to have decisions regarding psychiatric treatment made by a temporary substitute decision maker:

2 This Act does not apply to

...

(b) the provision of psychiatric care or treatment to a person detained in or through a designated facility under section 22, 28, 29, 30 or 42 of the *Mental Health Act*,

(c) the provision of psychiatric care or treatment under the *Mental Health Act* to a person released on leave or transferred to an approved home under section 37 or 38 of the *Mental Health Act*, or

...

C) The Plaintiff Louise MacLaren

Background

17. Ms. MacLaren worked as a nurse for approximately 25 years, which included work in emergency wards, in pediatrics, and in psychiatric wards in hospitals with patients involuntarily detained under the *Mental Health Act*.
18. Ms. MacLaren was first diagnosed with bipolar disorder in approximately 1986 and has been detained as an Involuntary Patient from time to time since then.
19. More recently, Ms. MacLaren was detained as an Involuntary Patient on or about February 25, 2012. She has remained an Involuntary Patient continuously since that time, with the exception of the period between June 21 and December 9, 2015.
20. While an Involuntary Patient, Ms. MacLaren has resided mostly outside of a hospital setting, in the community on leave under section 37 of the *Mental Health Act*. Ms. MacLaren has resided continuously in the community outside of hospital since January 2016.

Forced Psychiatric Treatment

21. As an Involuntary Patient, Ms. MacLaren has been administered Forced Psychiatric Treatment, including electroconvulsive therapy (“ECT”) and psychotropic medications.
22. Ms. MacLaren has undergone approximately 300 rounds of ECT in her life. ECT, formerly known as electroshock therapy, is a psychiatric treatment in which seizures are induced by administering electric currents through electrodes placed on the patient’s head. ECT is currently administered to patients under general anesthetic. The most

common adverse effects immediately following ECT are confusion and memory loss, as well as any side-effects that result from the administration of general anesthetic.

23. Psychotropic medications are psychiatric medicines that alter chemical levels in the brain that affect mood, thinking, and behaviour. They include antipsychotic medications, mood stabilizing medications, antidepressants, and sedatives. Psychotropic medications can be ingested orally, injected intramuscularly, or, rarely, administered intravenously.
24. Psychotropic medications carry a number of risks and side-effects, the most serious of which are:
 - (a) a potentially fatal condition known as neuroleptic malignant syndrome;
 - (b) a potentially irreversible condition known as tardive dyskinesia (involuntary movements);
 - (c) metabolic changes, including hyperglycemia, diabetes, and dyslipidemia; and
 - (d) other side effects, including dizziness, lightheadedness, drowsiness, tiredness, lethargy, anxiety, akathisia, agitation, extrapyramidal symptoms, excess saliva/drooling, blurred vision, weight gain, gastro-intestinal symptoms, musculoskeletal stiffness, extremity pain, myalgia, muscle spasms, headache, cardiovascular symptoms, and trouble sleeping.
25. Health care providers have administered Forced Psychiatric Treatment to Ms. MacLaren by:
 - (a) demanding that Ms. MacLaren take medications even though she expressed refusal to do so;
 - (b) threatening to inject Ms. MacLaren with medications if she refused to take medications orally;
 - (c) forcibly injecting Ms. MacLaren with medication;
 - (d) requiring Ms. MacLaren to take medications and receive ECT as a condition of her release from hospital on leave;
 - (e) threatening to recall Ms. MacLaren to hospital from leave if she refused to take medications or receive ECT; and
 - (f) issuing a warrant for Ms. MacLaren's apprehension under section 39(2) of the *Mental Health Act* following her refusal to take medications or receive ECT while on leave.
26. When Ms. MacLaren was not certified as an Involuntary Patient, health care providers threatened to recertify Ms. MacLaren as an Involuntary Patient if she refused to voluntarily take medications or receive ECT.
27. There are many treatment approaches available to treat Ms. MacLaren's symptoms, including approaches that do not entail ECT or the psychotropic medications administered to her as Forced Psychiatric Treatment.
28. At all times during which Ms. MacLaren was undergoing Forced Psychiatric Treatment, she was either capable of making a decision regarding psychiatric treatment or had family

members or friends who were available and able to make a decision as a Substitute Decision Maker.

Impacts of Forced Psychiatric Treatment

29. Being subjected to Forced Psychiatric Treatment has caused Ms. MacLaren severe psychological pain and stress.
30. Undergoing forced ECT is very traumatic for Ms. MacLaren. She experiences extreme anxiety when she is told she must undergo ECT treatment.
31. ECT involves serious risks and side effects. After she is subjected to ECT, Ms. MacLaren experiences confusion and disorientation that can last for several weeks. Ms. MacLaren also experiences memory loss as a result of ECT. Her memory loss is particularly acute in the period immediately following ECT, and she never regains full memory function.
32. In 2010, staff administering ECT forgot to place a mouth guard in Ms. MacLaren's mouth during the treatment. Ms. MacLaren shattered her teeth due to the convulsions in her jaw during the treatment.
33. As a result of psychotropic medications administered to Ms. MacLaren as Forced Psychiatric Treatment, she experiences dizziness, lethargy, headaches, extrapyramidal symptoms, and gastrointestinal problems.
34. Ms. MacLaren's experiences as an Involuntary Patient have made her fearful of voluntarily seeking medical help in the future should she cease to be an Involuntary Patient because any contact with health care providers could lead to certification as an Involuntary Patient and a complete loss of control over decision making for her treatment.

D) The Plaintiff D.C.

Background

35. D.C. holds a bachelor's degree in cognitive science and music from Harvard University and a master's degree in music and piano performance from the New England Conservatory of Music. Following his studies, D.C. returned to British Columbia in approximately June 2014 and has resided primarily with his parents since that time.
36. D.C. has a passion for playing the piano. In addition to playing the piano, D.C. expresses himself through writing poetry, making films, and other forms of art. Expressing himself through piano and other forms of art is a fundamental aspect of his life and personhood.
37. D.C. was detained as an Involuntary Patient on July 24, 2015. He has remained an Involuntary Patient continuously since that time, with the exception of a nine-day period between July 29 and August 7, 2015.

38. While an Involuntary Patient, D.C. has mostly resided outside of a hospital setting, in the community on leave under section 37 of the *Mental Health Act*. D.C. has lived continuously in the community on leave since January 11, 2016.
39. D.C.'s doctors believe that he has a mental illness but have not made a definitive diagnosis. At various times since July 2015, doctors have queried whether D.C. has, or have diagnosed D.C. with, bipolar disorder, schizoaffective disorder, psychotic disorder, psychosis not otherwise specified, major or mild neurocognitive disorder due to traumatic brain injury, psychotic disorder due to traumatic brain injury, Asperger's syndrome, schizophreniform disorder, schizophrenia, post-concussive syndrome from traumatic brain injury, substance induced psychosis, and attention deficit disorder.

Forced Psychiatric Treatment

40. As an Involuntary Patient, D.C. was administered Forced Psychiatric Treatment, including antipsychotic medications.
41. Health care providers have administered Forced Psychiatric Treatment to D.C. by:
 - (a) demanding that D.C. take medications even though he expressed refusal to do so;
 - (b) threatening to inject D.C. with medications if he refused to take medication orally;
 - (c) injecting D.C. with medications, sometimes using four-point restraints;
 - (d) placing D.C. in seclusion (solitary confinement) and demanding that he take medications while in seclusion;
 - (e) requiring D.C. to take medications as a condition of his release from hospital on leave; and
 - (f) threatening to recall D.C. to hospital from leave if he refused to take medications.
42. When D.C. was not certified as an Involuntary Patient, health care providers threatened to certify D.C. as an Involuntary Patient if he did not voluntarily take medications.
43. There are many treatment approaches available to treat D.C.'s symptoms, including approaches that do not entail the antipsychotic medications administered to him as Forced Psychiatric Treatment.
44. At all times D.C. was undergoing Forced Psychiatric Treatment, he was either capable of making a decision regarding psychiatric treatment or had family members or friends who were available and able to make a decision as a Substitute Decision Maker.

Impacts of Forced Psychiatric Treatment

45. As a result of the antipsychotic medications administered to D.C. as Forced Psychiatric Treatment, he experiences involuntary movements, muscle stiffness, muscle pain, and loss of dexterity, all of which impede his ability to play the piano. This causes D.C. severe psychological suffering because playing piano is such a fundamental aspect of his life and personhood.

46. In addition, D.C. experiences fatigue and lethargy as side effects of the antipsychotic medications. The antipsychotic medications dull his thought process and imagination, which impedes his ability to write poetry, make films, and engage in other forms of art.
47. D.C.'s experiences as an Involuntary Patient have made him fearful of voluntarily seeking medical help in the future should he cease to be an Involuntary Patient because any contact with health care providers could lead to certification as an Involuntary Patient and a complete loss of control over decision making for his treatment.
48. Being subjected to Forced Psychiatric Treatment has caused D.C. severe psychological pain and stress. Being excluded from decision making about what his treatment would entail made D.C. feel demoralized and disempowered.

E) The Plaintiff Council of Canadians with Disabilities

49. CCD is a national human rights organization of people with disabilities working for an inclusive and accessible Canada. CCD was founded in 1976 and was formerly called the Coalition of Provincial Organizations of the Handicapped.
50. CCD consists of nine provincial member groups, seven national disability organizations, and one affiliate member. CCD's member groups include Disability Alliance British Columbia, the National Network for Mental Health, and People First of Canada.
51. CCD was established by persons with disabilities to ensure that the voices of persons with disabilities are heard and to advocate for Canadians with disabilities. Its goal is to promote the full participation of, and equal opportunities for, persons with disabilities in Canadian society. CCD members represent people who have been subject to involuntary detention pursuant to the *Mental Health Act*.
52. CCD is Canada's official representative on Disabled People's International, a body that has been accorded consultative status with the United Nations Economic and Social Council. CCD was a non-governmental participant in the Canadian delegation responsible for negotiating and crafting the language of the United Nations Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, at 25(d), U.N. Doc. A/RES/61/106 (Dec. 13, 2006) (the "CRPD").

PART 2: RELIEF SOUGHT

1. The plaintiffs seek the following relief:
 - a. a declaration that subsection 31(1) of the *Mental Health Act*, paragraphs 2(b) and (c) of the *Health Care (Consent) and Care Facility (Admission) Act*, and paragraphs 11(1)(b) and (c) of the *Representation Agreement Act* unjustifiably infringe sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter"), Part I of the *Constitution Act, 1982*, being schedule B to the *Canada*

Act, 1982 (U.K.), 1982, c.11 (the “*Constitution Act, 1982*”) and are, to that extent, of no force or effect;

- b. costs assessed as special costs in any event of the cause; and
- c. such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

1. The plaintiffs rely on:

- a. section 52 of the *Constitution Act, 1982*; and
- b. the *Charter*, and in particular, sections 1, 7, and 15 thereof.

A) The Impugned Provisions Unjustifiably Infringe Section 7 of the Charter

- 2. Section 7 of the *Charter* guarantees everyone the right not to be deprived of life, liberty, or security of the person except in accordance with the principles of fundamental justice.
- 3. The right to decide what is done to one’s own body is fundamental and profound. This includes the right to give, refuse, and revoke consent to health care treatment, either individually or through a Substitute Decision Maker.
- 4. The Impugned Provisions deprive Ms. MacLaren, D.C., and other Involuntary Patients in British Columbia of:
 - (a) security of the person, insofar as they
 - i. remove Involuntary Patients’ rights to decide — either for themselves or through Substitute Decision Makers — what is done to their own bodies and permit the administration of non-consensual psychiatric treatment;
 - ii. permit non-consensual physical touching and the use or threatened use of physical restraint and force to administer Forced Psychiatric Treatment, including involuntary detention in hospital, physical restraints, injections, and solitary confinement; and
 - iii. cause severe psychological pain and stress and physical harm;
 - (b) liberty, insofar as they deprive Involuntary Patients of the freedom to decide what is done to their own bodies and involve the use or threatened use of physical restraint and force, including involuntary detention in hospital, physical restraints, injections, and solitary confinement; and
 - (c) life, insofar as they permit Forced Psychiatric Treatment that carries potentially fatal side-effects and risks.

5. The deprivations described above result from the existence and operation of the Impugned Provisions and are not in accordance with the principles of fundamental justice, including the principles that laws shall not be arbitrary, overbroad, or have grossly disproportionate effects.
6. In particular, the Impugned Provisions permit Involuntary Patients to be subjected to Forced Psychiatric Treatment without any assessment of their capability to make treatment decisions.
7. Forced Psychiatric Treatment can be administered to an Involuntary Patient even if she or he is capable of making a treatment decision or is incapable of making a treatment decision, but has a Substitute Decision Maker available.
8. The Impugned Provisions are also inconsistent with the CRPD, which was signed by Canada on March 30, 2007 and ratified on March 11, 2010.
9. The Impugned Provisions' infringements of section 7 of the *Charter* cannot be demonstrably justified in a free and democratic society.

B) The Impugned Provisions Unjustifiably Infringe Section 15 of the Charter

10. Subsection 15(1) of the *Charter* guarantees every individual the right to equality before and under the law and the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.
11. All adults in British Columbia who receive health care treatment are protected and benefit in law by:
 - (a) a presumption that they are capable of giving, refusing, or revoking consent to health care treatment;
 - (b) the right to an assessment by health care providers as to whether they are capable of giving, refusing, or revoking consent to health care treatment;
 - (c) the right to give, refuse, or revoke consent to health care treatment when capable; and
 - (d) the right to give, refuse, or revoke consent to health care treatment through a Substitute Decision Maker when found incapable.
12. By operation of the Impugned Provisions, all Involuntary Patients are deprived of the aforementioned protections and benefits in law.
13. The Impugned Provisions create a distinction based on actual or perceived mental disability. Involuntary Patients have all been examined by a physician who is of the opinion that the individual is a person with a mental disorder.

14. This distinction creates and perpetuates discrimination, prejudice, and stereotypes against a historically disadvantaged group by depriving Involuntary Patients of the aforementioned protections and benefits.
15. The Impugned Provisions are inconsistent with the CRPD, which was signed by Canada on March 30, 2007 and ratified on March 11, 2010.
16. The Impugned Provisions' infringements of section 15 of the *Charter* cannot be demonstrably justified in a free and democratic society.

Plaintiffs' address for service: Community Legal Assistance Society
300 – 1400 West Pender Street
Vancouver, BC V6E 4G1

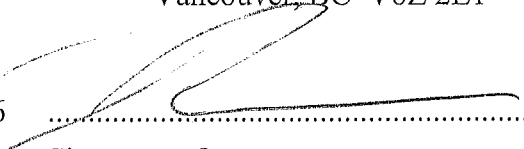
Fax number address for service: 604-685-7611

E-mail address for service: klove@clasbc.net

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: September 12, 2016


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Signature of
 plaintiff lawyer for plaintiffs

Kevin Love and Laura Johnston, Community Legal Assistance Society
Michael Feder and Emily MacKinnon, McCarthy Tétrault LLP

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - i. all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - ii. all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A constitutional challenge to subsection 31(1) of the *Mental Health Act*, paragraphs 2(b) and (c) of the *Health Care (Consent) and Care Facility (Admission) Act*, and paragraphs 11(1)(b) and (c) of the *Representation Agreement Act* as unjustifiable infringements of sections 7 and 15 of the *Charter*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS RELIED UPON:

The *Charter*

The *Constitution Act, 1982*
