IRAS Independent Rights Advice Service

What does the recent court decision mean for me as an involuntary patient?

On July 30, 2026 there was a court decision about consent and involuntary treatment: *Council of Canadians with Disabilities v. B.C. (Attorney General)*, 2026 BCSC 1416.

Background

Why was the court case put forward?

In 2016, the Council of Canadians with Disabilities (CCD) filed the case against the BC government. The purpose was to challenge whether BC's "deemed consent" approach to involuntary treatment follows the Canadian Charter of Rights and Freedoms (the Charter). The BC government argued that the approach does follow the Charter.

The judge ultimately decided that it violates the Charter.

What does it mean to follow the Charter?

The highest law in Canada is the Constitution, and the Charter of Rights and Freedoms is part of the Constitution. All sections of all laws in Canada have to follow the Constitution, which means they have to follow the Charter.

In the court case, the CCD challenged certain sections of BC laws, arguing that the sections are unconstitutional because they violate sections of the Charter.

What is "deemed consent"?

"Deemed consent" as a term comes from a section in the *Mental Health Act* (s. 31(1)) that used to say: "treatment authorized by the director is deemed to be given with the consent of the patient."

It meant that the health care provider (on behalf of the director) could give psychiatric treatment to an involuntary patient:

- without the patient's consent, and
- without the consent of the patient's personal guardian, committee, temporary substitute decision maker, or representative.

The CCD challenged Section 31(1) of the *Mental Health Act*. They also challenged specific sections of *the Health Care (Consent) and Care Facility (Admission) Act* and the *Representation Agreement Act*. All of these sections together make up the "deemed consent" approach.

How is "deemed consent" different from consent in other parts of health care?

In health care consent laws in BC there are basic rules that apply to all adults:

- Every adult is presumed capable of consenting to health care.
- If there is doubt about being capable of consent, every adult has the right to have a capacity assessment.
- In a capacity assessment, the healthcare provider determines whether the adult understands:
    - the information about the health condition and the proposed health care;
    - the risks, benefits, and alternatives of the proposed healthcare;
    - the fact that the information above applies to their situation.
- If a person is assessed as capable of consenting, healthcare providers must obtain their consent before providing healthcare.
- If a person is assessed as incapable, healthcare providers must obtain the consent of a substitute decision-maker, which could be:
    - a personal guardian or committee,

- a representative, or
- a temporary substitute decision-maker (spouse, child, parent, sibling, grandparent, grandchild, anyone else related by birth or adoption, a close friend, a person immediately related by marriage)

"Deemed consent" is different from consent in other parts of health care. The basic consent rules do not apply to involuntary patients receiving psychiatric treatment because of exceptions in the consent laws. These exceptions make up the "deemed consent" approach.

What about involuntary admission and detention?

The CCD did not challenge all parts of the *Mental Health Act*. They only challenged "deemed consent" which is about providing psychiatric treatment without consent.

They did not challenge other parts of the *Mental Health Act*, such as:

- Detention, or holding someone against their wishes in a facility;
- The four criteria for involuntary admission;
- The ability of police to take someone to a facility using the *Mental Health Act.*

Changes during the case

The case went to court in 2025. In December 2025, while the case was ongoing, the BC government removed section 31(1) – the "deemed consent" section – from the *Mental Health Act.* This made the case complicated because section 31(1) was an important section being challenged.

Even without that section, the judge was able to decide whether the "deemed consent" approach to involuntary treatment follows the Charter. She decided whether the sections of the two other laws that were being challenged (the

Health Care (Consent) and Care Facility (Admission) Act and the *Representation Agreement Act*) follow the Charter.

The judge's decision

Issue 1: Is there legal authority for involuntary treatment?

- After section 31(1) was removed from the *Mental Health Act* in December, the province argued that a different section, section 8(a), provides legal authority for involuntary treatment.
- The judge found that section 8(a) of *Mental Health Act* does not legally authorize involuntary treatment. This means it is unclear whether there is currently any legal authority for involuntary treatment.

Issue 2: Does the "deemed consent" approach follow the Charter?

- The judge found that that the exceptions to consent law that make up the "deemed consent" approach violate the Charter.
- These are sections 2(b) and (c) of the *Health Care (Consent) and Care Facility (Admission) Act*, and sections 11(1)(b) and (c) of the *Representation Agreement Act.*

How do they violate the Charter?

- The sections violate the Charter because they do not properly follow Sections 7 and 15 of the Charter.
- Section 7 is the right to life, liberty and security of person:
    - The right to make your own decisions about your own body and healthcare.
    - The right to be free from government actions that impose a risk of death or serious physical or psychological harm.
- Section 15 is the right to equal protection and benefit of the law without discrimination:

- Legal protections are meant for everyone equally. They must not be taken away from someone because of their race, national or ethnic origin, colour, religion, sex, age, and mental or physical disability.

What exactly did the judge find was wrong with the exception to consent?

- The judge found it violates section 7 because:
  - Involuntary patients do not get to be assessed for their capacity to consent to psychiatric treatment.
  - Involuntary patients do not get to have a substitute decision maker or advance directive for psychiatric treatment decisions.
  - These exceptions take away the right to make our own decisions about our own bodies and healthcare.
  - When psychiatric treatment decisions are made by the healthcare provider without the safeguard of seeking consent or substitute consent, it imposes a risk of death or serious physical or psychological harm.
- The judge found it violates section 15 because:
  - In application, the laws discriminate against persons living with mental disabilities.
  - Persons living with mental disabilities are denied health care decision-making rights that should be available to everyone equally. This reinforces stereotypes that they are inherently incapable of making treatment decisions.
- The judge also found:
  - The government could not justify the “deemed consent” approach by showing that it is better or less harmful than other approaches.

Current timeline

The judge's decision came down on July 30, 2026. The judge's decision says that the *Mental Health Act* does not provide authority for involuntary treatment and that certain sections of the health care consent laws violate the Charter. However, **in practice, the government has 6 months to amend the relevant laws to follow the Charter. The government may also apply for an extension to this timeline (for example, due to the transition period after the recent election).**

Nothing can be enforced until 6 months from the decision date. The decision was on July 30, 2026. The government has until January 31, 2027 to make changes. The government may also apply for an extension to this timeline (for example, due to the transition period after the recent election).

What does this mean for involuntary patients currently admitted under the MHA?

How is involuntary psychiatric treatment currently allowed to happen if there is no authority under the *Mental Health Act*?

The judge gave the government 6 months to address this problem. (The government may apply for an extension to that timeline.) The government will likely change the *Mental Health Act* in response to this finding.

Do I get a capacity assessment?

The judge gave the government 6 months to change the consent laws to make sure they no longer violate the Charter. (The government may apply for an extension to that timeline.) This likely means that in the future, the law will require capacity assessments of involuntary patients as part of seeking consent to psychiatric treatment.

But for now, in practice, the health care system will likely continue to function as it has before.

Does my close family or friend get to make psychiatric treatment decisions if I am unable to consent for myself?

The judge gave the government 6 months to change the consent laws to make sure they no longer violate the Charter. (The government may apply for an extension to that timeline.) This likely means that in the future, the consent laws will address how to seek substitute consent from a substitute decision-maker, if the involuntary patient is not capable of providing their own consent to (or refusal of) psychiatric treatment.

But for now, in practice, the health care system will likely continue to function as it has before.

Do I still have consent rights for other health care decisions that are not psychiatric?

Yes, consent to health care that is not psychiatric treatment has always been required and is still required. This includes advance directives, capacity assessments, and substitute decision-makers if you are found to not have capacity to consent.

Will my legal rights as an involuntary patient be affected?

Most of your rights as a patient under the *Mental Health Act* are not affected by the court decision and are likely to remain the same. Complaint pathways and mechanisms will also remain the same for now. Any potential changes depend on how the government will respond to the court decision by 6 months.

How does the court decision affect minors (under 19 years old)?

Minors can be admitted as an involuntary patient under two different sections of the *Mental Health Act.*

Section 20

The court decision does not impact the consent rules for minors under 16 admitted under section 20 of the *Mental Health Act* (after request by parent or guardian). If you are under 16 and admitted under section 20, consent has

been and is still required for both psychiatric treatment and other health care. In practise, healthcare providers often seek consent from your parent or guardian instead of from you.

Section 22

For minors admitted under section 22 of the *Mental Health Act*, a different health care consent law applies to you: the *Infants Act.* The court decision does not say that the *Infants Act* needs to be changed.

It is currently unclear whether there is legal authority for involuntary treatment, as the judge found that section 8(a) does not legally authorize involuntary treatment. This finding will impact all involuntary patients under section 22, including minors.

The judge gave the government 6 months to change the consent laws to make sure they no longer violate the Charter. (The government may apply for an extension to that timeline.) For now, in practice, the health care system will likely continue to function as it has before.