BC Mental Health Review Board: Consultation Report

In response to the Representative for Children and Youth "Detained: Rights of Children and Youth Under the Mental Health Act" report recommendation

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Introduction

In January 2021, the BC Representative for Children and Youth released their report entitled, “Detained: Rights of Children and Youth Under the Mental Health Act,” which included fourteen recommendations.

Recommendation #14 stated, “That the Mental Health Review Board pilot a new Review Board hearing process for children and youth that centres the young person and is trauma-informed and culturally attuned after actively engaging and consulting with health authorities, First Nations, Métis Nation and urban Indigenous communities and leadership and other appropriate bodies.”

The Mental Health Review Board accepted this recommendation and proceeded to move forward in achieving this outcome.

In July 2021 I was contracted with as a facilitator, to oversee this work. We began the work of planning the consultations which were to occur in September and October 2021. Invitations were extended for the consultations, and such consultations were held with five different groups: Children, youth and families; advocates; academics working on mental health literature and publications/government offices involved in Child and Youth Mental Health work; Aboriginal/Metis/Urban Indigenous people and agencies; and, Health Authorities. Group consultations were held for the advocates; academics working on mental health literature and publications/government offices involved in Child and Youth Mental Health work; Aboriginal/Metis/Urban Indigenous people and agencies; and, Health Authorities. Individual consultations were offered, as well as a group format, for children, youth, and families with lived experiences.

For me as Facilitator of this process, the journey began with a review of the reports and information available regarding the experiences of children and youth, with the Mental Health Review Board (MHRB) process. Although I wished to hear from any youth or children willing to speak with me on this matter, or to read any information available, I was surprised to discover there was very little information available.

As well, it has become clear through these consultations and this work that the children and youth experiencing mental health issues are not aware of or are afraid to apply for a MHRB hearing. This research and these conversations opened the door on the problems within the MHRB Hearing Process and showed us that there is work to be done to resolve these issues.

It also became apparent that the process itself must be examined and changed to be more trauma informed and culturally competent, including changes making the process more accessible for Aboriginal, LGBTQ2, Persons of Colour, and other communities within which these children and youth belong, the people it is intended to serve. This research shows that we have work to do. This report presents not just a challenge, but also an opportunity. I am hopeful that it will open up a dialogue and lead to action beyond the MHRB.

As a justice system, we are collectively failing Indigenous Peoples, LGBTQ2 persons, Persons of Colour, and other communities. We must engage, we can engage, and we must act together.

I would like to honour the voices of those who participated in these consultations, who want to ensure that the MHRB processes are safe and accessible for all people. Your voices and wisdom are central to our efforts.

I would like to acknowledge that we are living and working with gratitude and respect on the traditional territories of the First Nation peoples of British Columbia. I would also like to acknowledge our Metis and Inuit partners and friends living in these beautiful territories.

I specifically wish to acknowledge that I live and work as an uninvited visitor on the traditional Coast Salish territory of the Cowichan people. I want to share my gratitude and respect for being able to love, work, and play on this beautiful land.

Joan Cotie

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Table of Contents

The Office of the Representative for Children and Youth (ORCY) Report Highlights

The ORCY report entitled "Detained: Rights of Children and Youth Under the Mental Health Act," contained many important facts regarding Children and Youth and the Mental Health Act in British Columbia. I will highlight some of these points below.

I am including these highlights, which discuss the fourteen recommendations made by the Representative, even though only one of these recommendations was specific to the MHRB, is that the other thirteen recommendations are inter-connected with the fourteenth recommendation. However, our focus in the work to be completed by the MHRB will be on recommendation number fourteen.

- "many young people in this province struggle with mental health issues, in some cases severe;"

- "their needs are often not being met by the system of mental health supports and services available for children and youth;"

- This is not the first call for a "creation of a comprehensive and responsive voluntary system of mental health services for children and youth;"

- "Under the *Mental Health Act,* a child can be admitted and detained against their will, have treatment imposed on them and be subject to discipline, restraint or periods of isolation;"

- "B.C. is the only province in Canada where a capable, involuntary patient has no right to make psychiatric treatment decisions;"

- "young people have the right to participate in making decisions about their care, to the extent that they are able;"

- "The fear and confusion expressed by youth when they describe their experiences in involuntary detention is troubling; their perspectives provide insight into a world governed by the *Mental Health Act:"*

- "The Representative believes in the importance of voice and self-determination grounded in the *Canadian Charter of Rights and Freedoms* and international human rights instruments such as the *United Nations Convention on the Rights of the Child,* the *United Nations Convention on the Rights of Persons with Disabilities* and the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);"*

- It is important to look at, "where children and youth detained under the *Mental Health Act* may be supported to exercise their rights;"

- "The unique significance of how First Nations, Métis, Inuit and urban Indigenous people experience mental health detentions is also considered in this report, given the multitude of ways in which the rights and freedoms of Indigenous peoples have been limited and interfered with throughout colonization, residential schools and the child welfare system;"

- "Although the involuntary detention of First Nations, Métis, Inuit and urban Indigenous children and youth under the *Mental Health Act* may be intended for their safety and protection, it can be seen and experienced as another link in a long chain of oppression imposed by the state on Indigenous peoples;"

- "the racism experienced by First Nations, Métis, Inuit and urban Indigenous children and youth in hospitals, as documented in the recent report *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care,* and the absence of culturally safe and relevant services and supports," is of concern;

- "young people are apparently not being informed of and certainly not being supported to exercise their rights under the Act;"

- "the number of children and youth who are receiving involuntary mental health services has increased alarmingly. In the 10 years between 2008/09 and 2017/18, these admissions rose from 973 to 2,545 – or 162 per cent;"

The ORCY report includes 14 recommendations. The recommendations are presented in five themes as summarized below:

Overarching:
1. Identify why involuntary mental health detention for children and youth is increasing and opportunities to reduce these admissions;

2. Standardize the collection and reporting of key data pertaining to children and youth admitted under the *Mental Health Act;*

Admission:
1. Review and reconcile the section of the *Mental Health Act* that allows a child under 16 to be admitted on a voluntary basis at the request of their parent or guardian
2. Develop a process to enable a First Nations, Métis or Inuit child or youth to notify their community or Nation of their involuntary admission.

Rights:
1. Notify an independent body every time a child or youth is detained under the *Mental Health Act* and mandate this body to provide rights advice and advocacy

2. Develop new informational materials provided to children and youth detained under the *Mental Health Act* that explain what is happening, their rights and options
3. Ensure First Nations, Métis or Inuit children and youth who are detained under the *Mental Health Act* are offered services by staff who assist Indigenous patients
4. Allow children and youth detained under the *Mental Health Act* to retain personal items that do not pose a risk to their safety or the safety of others.

Treatment:
1. Ensure First Nations, Métis, Inuit and urban Indigenous children and youth detained under the *Mental Health Act* receive trauma-informed, culturally safe and attuned mental health services
2. Review practices for: a) children under 16 who have been voluntarily admitted and ensure "mature minor" capacity assessments are carried out prior to treatment; and b) children assessed as mature minors who have been involuntarily admitted
3. Amend the *Mental Health Act* to ensure isolation and restraint are only used as a last resort and only in accordance with legislative or regulatory criteria
4. Conduct a review of extended leave to assess its effectiveness, review the need for oversight mechanisms and whether children and youth are aware of their rights on extended leave.

Reviews:
1. Create mandatory periodic Mental Health Review Board reviews for involuntarily detained children and youth and children under 16 who are admitted at the request of their parents
2. Pilot a new Review Board hearing process for children and youth that is trauma-informed and culturally attuned.

The ORCY report highlighted that although the *Mental Health Act* was found to be compliant with the *Charter* with regard to involuntary admission, there are aspects of the Act that have not been scrutinized under the *Charter:* including the administration of treatment against the will of a patient; and, admission and treatment of under-16-year-olds at the request of parents, even when they are a mature minor. ("The mature minor principle allows a child who has been assessed as being a mature minor to consent to treatment where, as would be the case for an adult, all the risks and options are provided so that the consent given is a truly informed consent.")

(ORCY report – Detained: Rights of Children and Youth Under the Mental Health Act)

The Consultation Process

The ORCY report recommendation specifically referred to the need to consult with "*health authorities, First Nations, Métis Nation and urban Indigenous communities and leadership and other appropriate bodies".* Research was conducted to gather names of agencies, individuals, groups, and family members who are involved in the work of the MHRB and/or the MHRB hearing process.

Invitations were sent to individuals and agencies across British Columbia and based on the following categories: First Nations, Metis, and Urban Indigenous; Children, Youth and their families; academics; government agencies; advocates; and, health authorities. An attempt was made to send these invitations to members including culturally diverse, LGBTQ2S+, differently abled, and other communities. Although invitations were sent to specific individuals, there was a request to agencies, individuals and groups for feedback on the names and contact information for persons who may be best able to provide feedback in the consultation process, including those working within mental health services and those with lived experience within the mental health system. Unfortunately, we were unable to receive a response from all communities despite these efforts.

The consultation participants were asked to sign a confidentiality agreement and were provided with the following information prior to attending a consultation:

Hello,

The Mental Health Review Board (MHRB) has accepted the BC Representative for Children and Youth's Recommendation #14 as contained in the 2021 report Detained: Rights of children and youth under the Mental Health Act:
"That the Mental Health Review Board pilot a new Review Board hearing process for children and youth that centres the young person and is trauma-informed and culturally attuned after actively engaging and consulting with health authorities, First Nations, Métis Nation and urban Indigenous communities and leadership and other appropriate bodies".

The MHRB has contracted with Joan Cotie as the Consultation Facilitator, and is holding videoconference consultations to receive feedback and suggestions toward a revision of the hearing process for children and youth that is child-centred, trauma-informed and culturally attuned, principles articulated in "Detained." You are invited to participate in these consultations. It is our goal to:

- identify gaps in the hearing process and in the supports provided; and
- ask for ideas and recommendations on how the Board can improve children and youth experiences as well as enhance opportunities for them to have a say in the MHRB processes.

We believe it is important that everyone is given the opportunity to share their experiences and we value your input on this important matter. The consultations will be confidential and attendees will be required to sign a confidentiality agreement.

The consultations for [GROUP NAME] will take place on [DATE AND TIMES]. The agenda and meeting videoconference invitation will be sent closer to the consultation date. If you would like to participate, please confirm your attendance as soon as possible by replying to Joan Cotie at jamcotie@telus.net with your name and the best email address at which you can be reached. For further details on the consultation process, you can reach Joan Cotie at jamcotie@telus.net.

Questions for Consultations

Thank you for your interest in attending the virtual consultation regarding children and youth and the Mental Health Review Board (MHRB). As you know, the MHRB has accepted the BC Representative for Children and Youth's Recommendation #14 as contained in the 2021 report Detained: Rights of children and youth under the Mental Health Act:
"That the Mental Health Review Board pilot a new Review Board hearing process for children and youth that centres the young person and is trauma-informed and culturally attuned after actively engaging and consulting with health authorities, First Nations, Métis Nation and urban Indigenous communities and leadership and other appropriate bodies".

We will be holding consultations with various groups to discuss and gather feedback on how we can provide a process that is child and youth centred, trauma informed, and culturally attuned. The following are some questions and thoughts to reflect on as we approach these consultations. Please look through them and be prepared to discuss and offer your thoughts on these matters and any others you believe are important to consider.

Youth Centred

- What are the differences between a youth and an adult patient when it comes to the hearing process?
- Have we identified the differences and accommodated them in our process? If not, what are we missing?
- What training is needed for members to be efficient yet responsive to youth and child needs in a hearing?
- Is there any pattern in youth applications, such as region, rural or urban, age groupings, cultural grouping? Where do we get this information?
- Youth patients stay in our system for extended periods and are being seen as a youth and then later as an adult. Is there anything that can be done by the MHRB to lessen this occurrence?
- Are the families involved in our hearings as supports? If not, why not?

- How can youth have the option to have a non-family friend as a support if family is not supportive?
- Are youth's represented, if not, why not?
- Would it be helpful for the youth/children and the MHRB to have a designated advocacy group created that could facilitate assigning an advocate to every youth or child detained? Should this be a legal advocate or more of an emotional support person or combination thereof? Do we need a dedicated service in BC for this?
- Are the youth/children understanding the process and feeling comfortable with it?
- Let them speak and tell us how to improve the process?
- Do the care givers, families, support workers, have sufficient information about the Board? If not, what is missing?

Culturally Attuned

- Is our process culturally attuned? If not, what could that look like?
- Aboriginal youth - Should we build smudging or other practices into our process?
- Should an elder be present with the youth?
- Culturally responsive – Are there cultural practices we need to include?
- Should a community member be present?
- Should we be using some cultural language in our process?
- Does the community reach out to the families when a youth is certified?
- How do we identify the community?
- Does the youth wish to have the cultural community involved? How do we ascertain that?
- Are there approaches to mental health within the community of which we need to be aware?
- Does the community follow-up when the youth is discharged? When practical should the hearing take place in a cultural facility/setting?

Trauma Informed

- Is the process trauma informed? If not, what is missing?
- Are members trained in trauma informed practice?
- Are the needs of the children/youth/families considered individually as to how the process traumatizes and re-traumatizes the children, youth and families?

Participants in the Consultations

Participants in the consultation process came from many backgrounds and different levels of involvement in, or knowledge of, the MHRB Hearing process.

The consultations were arranged as such: Academics and Government Offices; Aboriginal, Metis, and Urban Indigenous; Advocates; Children, Youth and Families; and Health Authorities. Sometimes, person attending a consultation may have been part of

more than one of these groups and chose the session they wished to attend. There were 48 attendees at the consultations.

I wish to express my gratitude to all who participated in the consultations, for their insight and knowledge that was freely shared, and their offers to participate in further work of the MHRB to improve the hearing system.

At the start of each consultation, there was an acknowledgement that we are living and working with gratitude and respect on the traditional territories of the First Nation peoples of British Columbia and to acknowledge our Metis and Inuit partners and friends living in these beautiful territories.

With respect of the traumatic topics and subject of the consultations, an emotional trigger warning was discussed, acknowledging that, “we will be discussing topics related to mental health treatment and detentions that may be upsetting for some people. For those who have experienced treatment in the mental health system, and First Nations, Metis, Inuit and urban Indigenous peoples, the content may trigger memories of distressing personal experiences. While the consultations are meant to look at the process for reviews from pre-hearing to post-hearing, it may trigger feelings or thoughts of past events. If you require emotional support, you can contact myself or (MHRB Program Coordinator) for information on crisis and help lines. This information is also provided in the chat room function of the zoom meeting.”

As well, during the consultation with Aboriginal, Metis, and Urban Indigenous people, an elder was invited to attend, open and close the meeting, and be available for anyone requesting to speak privately with her. We thank elder Bertha Cardinal for her support during this process.

Themes in the Consultations

There were a number of themes which emerged in the consultation process. From these themes we were able to identify recommendations which may be reviewed by the Community Advisory Council which will be one of the next steps in this consultation process undertaken by the MHRB.

The themes identified include: legal assistance for children and youth being certified; communication and information to the children and youth; MHRB member training; the MHRB hearing format; cultural awareness; trauma awareness and trauma informed services; and, other suggestions.

The majority of these themes emerged in each of the consultations.

Within the consultations, there was discussion about the scope of the undertaking to accept and move forward on the Office of the Representative for Children and Youth (ORCY) recommendation #14, by the MHRB. Many of these discussions brought forth

these themes and ideas, and the discussions were encouraged even though the topic may have been outside the MHRB scope and authority. The idea was that such themes and ideas that are outside the scope and authority of the MHRB will be passed to the appropriate body to review and decide how or if they can use the information offered by our participants.

Therefore, the recommendations listed below are not necessarily going to be addressed by the MHRB. Those within the scope of the MHRB will be addressed and those without, passed to the appropriate bodies, e.g., the Ministry of Health.

Recommendations

Legal Assistance:

Under this theme, the following recommendations emerged:

- an Independent Rights Office;
- the Access Pro-Bono legal services phone number be added to forms;
- that an advocacy agency be triggered immediately once a patient is detained and someone assigned to contact the patient; and,
- that a “Hot-line” style advice service for the public to contact MHRB be developed, to call for assistance and to connect people to MHRB resources and provide advice.

Communication and Information:

Under this theme, the following recommendations emerged:

- Plain language information pamphlets be provided to patients;
- On-demand videos to help youth understand the hearing process and their rights;
- Use of social media to inform patients of the hearing process and their rights prior to detainment - Examples: TikTok and YouTube;
- Information packages provided to caregivers, patients, and parents;
- Multiple avenues of information be provided as well as multiple times provided;
- Peer-to-peer support for youth (Peer Mentors) who are engaged in the MHRB process;
- Information posters;
- Infographics; and,
- Aboriginal navigators in the hospital could be used for information and to connect with patients.

Member Training:

Under this theme, the following recommendations emerged:

- Standard of training for all Members of the MHRB;
- Training on Charter and international Human Rights;

- Training in Trauma Informed Practice for all Members;
- Training from those with lived experience – “Nothing about us, without us;”
- Further Zoom training for Members. Examples of loud backgrounds and poor ability to navigate the Zoom platform;
- Minimum standard of training. Following that it must be ongoing;
- Training on how to speak to youth. Ensuring that they felt heard and valued; and,
- Self-reflected practices with respect to racism.

Hearing Format:

Under this theme, the following recommendations emerged:

- Allow patient choice – who hears their case (conflict of interest re. previous hearings)? Who attends? Location? Cultural supports? Community supports?;
- Hybrid Model offering combination of virtual and in-person attendance at hearings is supported and it is the patient’s choice, where geographically possible;
- Have advocates meet with client face-to-face when patient is attending virtually;
- Pre-hearing conferences held by MHRB staff to ensure accommodation requests are recorded and space is appropriate;
- Ensure suitable hearing rooms are provided as to size, location, cultural accommodation, and all needs being met;
- Move towards less adversarial spaces and be creative as to the location - Example: outside or cultural centre;
- Hearings held outside of the facility due to perceived imbalance when held at the facility at which they are detained (perhaps in Friendship Centre/community centre);
- Using less legal talk and trying to make the hearings more child and youth centred and accessible;
- Allow for flexibility and a more collaborative style hearing;
- Review Plain Sight Report recommendations regarding hearing processes for youth;
- Hearings be shorter;
- Hearings be scheduled in a timelier manner;
- Avoid the win mentality. Hearings must maintain or if possible, improve the patient/psychiatrist relationship and must not strain the relationship; and,
- Allow written testimony instead of verbal, to be presented.

Cultural Awareness:

Under this theme, the following recommendations emerged:

- Allow the patient to select their community and supports, who may not always be family;

- Build a relationship with the youth which may encourage them to speak out about the cultural components they would like provided for in the hearing and which will provide and encourage cultural safety;
- Encourage and allow the presence of Elders at hearings;
- Increase diversity amongst panel Members allowing for more representation of communities, including representation from the LGBTQ2AI+ community, Aboriginal community, Persons of Colour community, or any other community identified by the patient; and,
- Do not take a pan-Indigenous approach and ensure that any cultural practice requested is provided for that individual.

Trauma Informed Approach and Services:

- Ensure the patient is not being re-traumatized in the hearing process; and,
- Allow for the individual needs of patients to be met and not questioned.

Other:

Under this theme, the following recommendations emerged:

- Amend rules to state that the patient can request accommodations to the hearing process;
- Amend rules to allow them to feel more comfortable to make such requests and not be viewed as being difficult;
- Develop a Youth Advisory Committee;
- Advocate for a Mental Health Act review as the current one is old and outdated;
- Improve service availability in Northern and remote regions;
- Improve aftercare service availability; and,
- Published hearing outcomes anonymously.

Current Practice for Hearings

The following flow chart shows the current office practice for receiving a form 7, processing a form 7, assigning panel members, monitoring a file, and closing a file.

Stage 1: Application received (form 7)

Stage 2: Pre-hearing

- Application reviewed by MHRB staff. Review for eligibility, interpreters and request for the Mental Health Law Program (MHLP) or other representation.
- Intake Administrator determines timeframe for hearing. This is either 14 or 28 days from the date the application was received.
- Dates provided to mental health facility.
- Book hearing. Send hearing package to facility and MHLP, when requested or other representation.
- Book interpreter, if needed.
- Book panel members. Intake Administrators consider age of applicant and panel members from past hearings.
- Intake Administrator conducts call outs to mental health facility. This is done 3 days and 1 day in advance. This is to ensure that the applicant remains certified, is aware of the hearing date and time, confirm the presenter and remind the staff of the case note deadline.

Stage 3: Hearing

- Currently via Zoom.
- Panel Chair will introduce participants and explain how the hearing will work including the order in which participants will speak and ask questions.
- Patient will be provided a chance to present evidence, ask questions, call on witnesses and make final summary statement.
- Hearing generally lasts two to three hours.
- The panel makes their decision (a form 8) to either continue detention or discharge from involuntary status.

Stage 4: Post-hearing

- Where possible, decision is given at the hearing verbally.
- The Form 8 must be sent to the facility and MHLP, when involved or other representation within 48 hours of hearing.
- Written reasons are provided to the facility, patient and MHLP (when involved) or other representation as soon as possible and no later than 14 days after decision is made.

Stage 5: Close file

Next Steps

The plan for next steps is to form a Community Advisory Council (CAC) to oversee and make recommendations for the changes in the MHRB Hearing Process. Invitations have been extended to a number of the participants of the consultations. This CAC will be in place by the end of the year, with meetings beginning in January 2022.

The MHRB CAC – Children and Youth (Council) is convened by the Board for the purpose of developing recommendations to the Board for a new children and youth hearing process. Specifically, the Board seeks recommendations from the Council on the following:

a) Review and develop recommendations from the October 2021 community consultations and independent consultation facilitator's report;
b) Revisions to the Board's Rules and Practice Directions, specifically the Practice Direction – Children in Hearings;
c) Identify and fill gaps in the Board's current pre-hearing, hearing, and post-hearing process for children and youth as necessary.

The Council will be expected to engage in discussions with the MHRB Chair, staff and members and possibly a working group. It is anticipated that the new children and youth hearing process will be implemented in October 2022.

The Council's mandate will officially end in October 2023. This provides the Board a one-year period to engage in a review of the project and evaluation of the new hearing process for children and youth.

We look forward to this important work and working together to make changes which may benefit the children, youth and their families involved in the MHRB Hearing Process.

Joan Cotie

Consultation Facilitator