

MEDIA RELEASE

Canadian Mental Health Association

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FOR IMMEDIATE RELEASE

CLOSURE ON HEALTH INFORMATION ACT MAY CAUSE A CHARTER CHALLENGE

Edmonton, Alberta, December 9, 1999—

Bill 40, Alberta's Health Information Act, may face a "Charter challenge" by mental health advocates. Noting its influence in the November 26 Supreme Court of Canada decision in the case of The Attorney General for Alberta vs. Mills, the Canadian Mental Health Association has announced it will actively consider a court challenge now that the government has invoked closure on debate.

Association spokesman and lawyer Aleck Trawick, a former Provincial Ombudsman, led a team of eight volunteer lawyers who argued before the Supreme Court in a successful bid to protect the privacy of personal information gained through counselling and therapy. Trawick described the proposed Alberta law as "Charter compromised." He described the Act as "unbalanced, dangerous and in direct conflict with the principles announced less than two weeks ago by the nation's highest court."

The proposed Alberta legislation has "many flaws" according to Trawick, not the least of which will allow access to personal records by many "custodians," including committees, councils, Health Authorities, pharmacists, the Minister and others, including "individuals" and "corporations" that may be designated in future regulations. The Act also allows for seven purposes for which identifiable information can be released, only one of which deals with therapeutic care.

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In contrast, the Supreme Court noted support for the principle that the “freedom not to be compelled to share our confidences with others is the very hallmark of a free society.”

Association President Dennis Anderson of Edmonton said the dangers for the mental health system are “particularly acute.” “We know that the stigma associated with mental illness remains intense” he said, “and many people now avoid receiving treatment in fear of the attitudes of others. The expectation that records may be shared widely will compound that problem greatly.”

The confidentiality of medical records is essential to trust and recovery.

The Association, along with an alliance of other mental health and professional organizations, expressed concern at their meeting of December 6 with the Health Minister. While the Minister agreed to consult regarding the development of regulations, legal advice is that the very principles in Bill 40 are in conflict with the Canadian Charter. As a consequence, the Association is asking other stakeholders, including the Alberta Medical Association, to participate in a “Charter challenge.”

The legislation “should be withdrawn and rewritten in consultation with stakeholders,” said Anderson.

“Alberta needs a better balance between the needs of a health system to acquire information for planning and evaluation and the need for privacy of personal information.” Trawick added a quote from the Supreme Court of Canada which, he said, “underpins our potential for a successful Charter challenge.”

“In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination by the state.”

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