



## INFOGUIDE

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### SECTION 80 – MENTAL HEALTH ACT

#### What can I do if the hospital or a staff person violates the *Mental Health Act*?

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This InfoGuide discusses the use of section 80 of the Ontario *Mental Health Act* if you believe this law has not been followed and your rights have been violated. Depending on the circumstances, there may be several other alternatives that you may follow instead of or in addition to using section 80.

*Before pursuing any option, you should speak with a lawyer.*

#### ***What are my rights under the Mental Health Act?***

- The *Mental Health Act* is a provincial law that allows healthcare providers and psychiatric facilities to perform certain actions that otherwise would not be permitted. For example, the *Mental Health Act* allows a doctor to detain a person as an involuntary patient in a psychiatric facility against his or her will.
- While the *Mental Health Act* gives healthcare providers and facilities certain powers, it also provides a very clear set of rules that must be followed when those powers are exercised. To use the involuntary detention example, a doctor must comply with the rules of the *Mental Health Act* by examining the person, completing specific forms, notifying a rights adviser and providing the person with notice of the reasons and length of the detention.
- Without clear guidelines and rules for healthcare providers and facilities to follow, there may be a concern that rights under the *Charter of Rights and*

*Freedoms* may be violated. It is essential not only that the rules are followed but that there is a means of enforcing the rules.

- The *Mental Health Act* creates an "offence" section that allows persons who breach the rules to be charged with a provincial offence.

### ***What is an offence under the Mental Health Act?***

- Section 80 of the *Mental Health Act* says that "every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$25,000."
- The *Mental Health Act* is there to protect you and to make sure that everyone involved in providing you with care and treatment follows the law.
- Examples of possible offences could include:
  - If a doctor decides to conduct a psychiatric assessment and puts you on a Form 1 but you do not receive proper notice (Form 42) of the process.
  - If a doctor makes you an involuntary patient (Form 3) without having properly assessed you.

### ***If I think my rights have been violated under section 80, what can I do?***

- You have two options available to you.
  1. You can contact the police and ask them to charge the person with a provincial offence; or
  2. You can contact a justice of the peace at your local court and swear an "information" (a written statement of the charges alleged) and request that he or she lay charges. You can find the location of your local courthouse by calling the Ministry of the Attorney General in Toronto at (416) 326-2220 or toll-free at 1-800-518-7901. You can also find a list of all the courthouses in Ontario at the Ministry of the Attorney General's website at [www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp](http://www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp)
- Generally, you must lay a charge under section 80 within two years of the incident that you are complaining about.

### ***What happens if the police or the justice of the peace refuses to lay charges?***

- The police and justices of the peace have the discretion to either lay or not lay charges.

- However, the police and justices of the peace often do not understand the *Mental Health Act* and the issues relating to patient rights. To make it easier for them to understand your concerns you should try to have as much information and documentation as possible on your first visit. It is valuable to have statements of any witnesses with you although it is not necessary to take the witnesses with you. You may also wish to bring the applicable sections of the *Mental Health Act* with you - both section 80 and the section that you allege was breached.

***Can I still make a complaint to the College of Physicians and Surgeons or the College of Nurses of Ontario if I pursue section 80 charges?***

- Yes. You can still make a complaint to the College that regulates the professional that you are concerned about.
- Section 80 charges and College complaints are parallel processes and you can pursue both at the same time. A section 80 charge will go through the court process. A complaint to the College will go to an internal complaints committee comprised of College members and community or lay members. The College matter may be delayed, however, until the completion of the section 80 charge.

***Do I have any other legal recourse or options?***

- You may have other legal options available to you if you believe that a psychiatric facility or a health practitioner has breached the *Mental Health Act* or violated your rights. Consult a lawyer to find out about your legal options, including the possibility of civil litigation or criminal charges.

***Questions?***

- If you have questions contact your local Patient Advocate or call the central office of the Psychiatric Patient Advocate Office at 1-800-578-2343.
- If possible, you should also speak to a lawyer for legal advice about your options.