Consultation Paper
on the
Proposed *Mental Health Act*

Prepared by:
Government of Prince Edward Island
Department of Health and Wellness
August 2022

Invitation to Submit Written Comments

The deadline for comments on the proposed *Mental Health Act* is Friday September 30, 2022

The purpose of this Consultation Paper is to provide a summary of the proposed new *Mental Health Act* which will replace the existing *Mental Health Act.*

Written comments may be sent by mail or email to:

Legislative Specialist
Department of Health and Wellness
P.O. Box 2000
Charlottetown, PE C1A 7N8

Email: nmhewitt@gov.pe.ca

This consultation is a public process. **The Department of Health and Wellness assumes that comments received on this Consultation Paper and proposed *Mental Health Act* are not confidential unless otherwise indicated.** The Department may quote from or refer to your comments in whole or in part. The Department may attribute comments provided by organizations. If you would like your comments to be treated confidentially, please request confidentiality in your response or submit your comments anonymously.

Any personal information received by the Department through this consultation process is subject to the *Freedom of Information and Protection of Privacy Act* and/or the *Health Information Act.* If you have any questions or concerns, please contact the Legislative Specialist by means of the contact information provided above.

I. Introduction

All Canadian jurisdictions have legislation that provides for the treatment and protection of people with mental disorders. The current *Mental Health Act* ("MHA") became law in 1996 and has been updated several times since then; however, the MHA is now considered dated legislation and in need of replacement.

What is the purpose of the MHA?

Most people requiring hospital treatment for mental disorders are voluntarily admitted to hospital, just like people with other illnesses. However, some people with mental disorders refuse to accept psychiatric treatment or even acknowledge that they are ill. Without involuntary admission and treatment made possible under the MHA, these people may continue to suffer, causing significant disruption and harm to their lives and the lives of others.

The main purpose of the MHA is to provide the authority, criteria and procedures for involuntary admission and treatment of people with mental disorders. However, the MHA also contains protections to ensure that these provisions are applied in an appropriate and lawful manner. Safeguards for the rights of people involuntarily admitted to a psychiatric facility include rights notification, medical examinations within specified time periods, second medical opinions on proposed treatment and access to review panels and the courts.

Why is a new *Mental Health Act* necessary?

Since the MHA was passed by the Legislative Assembly in 1994, the legal landscape has shifted. New legislation has passed that addresses subject matters that are also addressed in the MHA. The provisions in the subsequent legislation are generally more comprehensive than the provisions set out in the MHA. This legislative duplication can be confusing and unwieldy. For example:

<u>*Health Information Act*</u> Currently, section 31 of the MHA provides for the access, correction and disclosure of clinical records. These matters are now addressed in the *Health Information Act*, legislation which came into effect in 2017, which is solely focused on personal health information and what can and cannot be done with that information. The provisions in the *Health Information Act* are far more comprehensive than the provisions in the MHA.

<u>*Consent to Treatment and Health Care Directives Act*</u> Currently, section 23 of the MHA provides for consent to treatment and the capacity of a person to consent to treatment. The *Consent to Treatment and Health Care Directives Act*, which came into effect in 2000, provides for consent to treatment by the person, the presumption of capacity, and sets out who may provide consent to treatment on behalf of an incapable person. The provisions contained in the *Consent to Treatment and Health Care Directives Act* are more comprehensive than the provisions in the MHA.

<u>*Adult Guardianship and Trusteeship Act*</u> (pending) Currently, section 40 of the MHA provides for a guardianship appointment by the courts. The MHA is not the proper place for this type of provision. The Department of Justice and Public Safety is preparing to move forward with a new *Adult Guardianship and Trusteeship Act* to address, in depth, the myriad of issues surrounding the notions of guardianship and trusteeship.

II. Proposed *Mental Health Act*

The purpose of this section of the Consultation Paper is to highlight some of the provisions contained in the proposed *Mental Health Act*, the "Bill".

Part 1 Interpretation and Administration: Sections 1-3

1. Section 1 defines terms that are used throughout the Bill. This section includes existing, revised and new terms. For example, the definition of "mental disorder" has been updated to align with the definition of "mental disorder" used in 9 other Canadian jurisdictions. New definitions include "substitute decision maker", "community treatment", "community treatment order" and "community treatment plan".

2. Section 2 sets out what the Bill is intended to achieve -- providing legal authority for certain necessary actions while concurrently balancing an individual's legal rights.

3. Section 3 of the Bill sets out the duties of the Minister of Health and Wellness. This section is not as expansive as the MHA as many of these duties are now set out in the *Health Services Act* which came into effect in 2010.

Part 2 Medical Examination and Psychiatric Assessment: Sections 4-8

4. Sections 4-8 provide the process by which an involuntary medical examination may be authorized, and the criteria that must be satisfied. Of note is the change to the criteria which are set out in subsection 4(1). The Bill provides that substantial physical or mental deterioration is an alternate to harm. The requirements of having a mental disorder, the harm criteria and the refusal or inability to consent to treatment remain substantially the same as the MHA.

5. Sections 5 and 6 impose legal duties upon the individual apprehending or detaining a person for an involuntary medical examination.

6. Section 7 provides that where a person is apprehended and taken for an involuntary medical examination, a medical practitioner may detain, restrain and observe the person for not more than 24 hours and conduct an involuntary medical examination. The medical practitioner has the duty to inform the person of their rights and either: a) refer the person to a psychiatrist for an involuntary psychiatric assessment, or b) release the person from detention.

7. Subsection 8(1) provides the criteria that a person must satisfy, in a medical practitioner's opinion to, by order, refer a person to a psychiatrist for an involuntary psychiatric assessment. Subsection 8(3) provides for the authority of an order, including for the apprehension of the person and for a psychiatrist to detain, restrain and conduct an involuntary psychiatric examination, on the person, in a psychiatric facility, within 72 hours. Subsection 8(4) provides that the psychiatrist has the duty to inform the person or their representative of the person's legal rights and subsection 8(5) provides a psychiatrist with

three potential courses of action: a) admit the person to a psychiatric facility; b) issue a community treatment order; or c) release the person from detention.

Part 3 Admission to Psychiatric Facility: Sections 9-17

8. This Part sets out the criteria for voluntary and involuntary admissions. Section 10 provides psychiatrists with the legal authority to admit someone against their wishes for not more than 30 days and imposes a duty on the psychiatrist to inform the patient of their legal rights.

9. Section 11 provides for the termination or continuation of an involuntary admission. Detention for further periods of time are provided as are applications for review of the detention by the Review Board under Part 5.

10. Sections 12 and 13 provide for inter-facility and inter-jurisdictional transfers of involuntary patients.

11. Section 15 provides for authorized leave for involuntary patients for a specific period of time. It also provides for the revocation of the authorized leave when appropriate and the duty of the psychiatrist to inform the involuntary patient or their representative of such revocation.

12. Section 16 includes provisions relating to in-patient communication rights and the duty of an administrator to inform the patient of those rights.

13. Section 17 provides for a determination of capacity to be completed by a psychiatrist in accordance with the *Consent to Treatment and Health Care Directives Act* and the duty to inform the patient of their rights.

Part 4 Community Treatment Order: Sections 18-23

14. Community Treatment Orders, "CTOs" are a new addition to the Bill and are a valuable treatment tool used in most provinces. The purpose of a CTO is to break the cycle of admission, improvement, decompensation, and readmission for appropriate patients. To further advance PEI's commitment to Community First, in which mental health supports and treatment are provided in the community whenever possible, CTOs may be issued for patients who meet certain criteria.

15. A patient's eligibility for a CTO is determined by the criteria set out in subsection 18(1). A CTO is only issued if a comprehensive community treatment plan, "CTP", has been developed for the person. The criteria for a CTP are set out in subsection 18(3).

16. Subsequent provisions in this Part provide for the amendment of a CTP, the renewal and revocation of a CTO.

Part 5 Review Board: Sections 24-34

17. This Part continues the Mental Health Act Review Board established under the MHA. It increases the size of the Review Board to 7 members and provides for 3 members to hear and decide on an application. This Part also provides for the quorum, disqualification and the replacement of a panel member.

18. The Review Board is authorized consider applications for the review of matters including:
    i. an involuntary admission or renewal thereof;
    ii. the transfer of a patient to another jurisdiction;
    iii. the denial of a patient's communication rights;
    iv. the cancellation of a certificate of leave
    v. a certificate of incapacity
    vi. the selection or authority of a substitution decision-maker;
    vii. the issuance or renewal of a CTO; and
    viii. an order for psychiatric and medical treatment without consent.

19. This Part also provides for the conduct of the proceedings and the duties and powers of panel members as well as the time period for providing a decision and the right to of parties to apply for judicial review.

20. Most importantly, section 32 provides for the rights of the parties, including the right to retain and instruct legal counsel.

Part 6 General: Sections 35-40

21. This Part of the Bill provides for liability protection, regulation-making authority, repeal of the MHA and commencement.

III. Invitation for Comment

This Consultation Paper has provided a summary of the proposed *Mental Health Act* and the changes from the current MHA.

A copy of the proposed *Mental Health Act* is available for review on the Health and Wellness website at https://www.princeedwardisland.ca/en/information/health-and-wellness/department-of-health-and-wellness-public-consultations.

We encourage you to provide your written comments on the proposed *Mental Health Act* not later than **September 30, 2022**, so that Government has an opportunity to consider all feedback prior to finalizing the Bill for consideration by the Legislative Assembly of Prince Edward Island. Comments may be directed to the Legislative Specialist using the contact information provided in page 2 of this Consultation Paper.