EMPOWERMENT COUNCIL
A voice for the clients of the Centre for Addiction and Mental Health

CLARKE SITE: 250 College St. Room 1262, Toronto, ON M5T 1R8 (416) 535-8501 ext.4022, jennifer_chambers@camh.net
QUEEN STREET SITE: 1001 Queen St. W. Room 160, Toronto, ON M6J 1H4 (416) 535-8501 ext. 3013 lucy_costa@camh.net

Empowerment Council Response to:

"Out of the Shadows at Last", the final report from the "Kirby and Keon" Committee
May 2006, Senate Committee on Social Affairs, Science and Technology

Response to Section 4.2 CHARTER OF PATIENTS RIGHTS

The Committee noted that in its consultations with stakeholders, a legislated patients' charter was supported. They also note that service providers and family members were less supportive. (p. 73) This is unsurprising, as service providers and at times family members are the groups of people in relation to whom people in the psychiatric system require their rights to be protected. This is akin to asking men if they think a charter of rights for women is a good idea, and failing to note that their response might be based on self interest, not on what is right and just for women.

The Committee notes **Roadblocks** in the creation of such a document:

Philosophical Roadblocks (Section 4.2.3.1)

The Committee supposes that entrenching rights in a distinct legal document places the named group at risk of further discrimination. No evidence supports this supposition.

As example they quote is from an institution that created a charter of rights and "responsibilities". It is true that such documents are a travesty of justice, no other discriminated group in the country would be treated in such a degraded fashion. Would a charter of women's rights and responsibilities be perceived as anything less than an outrage? This is a good reason to strongly condemn all such charters and the organizations who allow them to exist. To suggest that this is a reason not to allow a charter of rights, however, is a straw man argument. The stakeholder support was for a charter of rights, not responsibilities.

The criticism of the CAMH Bill of Client Rights is based on the idea that the creation of parallel rights enforcement systems weaks equal rights. Again, this is a false argument, as the Bill provides the means, usually the only means, by which clients learn that they have rights, and it potentially puts them in contact with people who will advocate on their behalf at whatever level the client instructs, including to external sources. While we agree that ideally all laws would create a condition of justice for all Canadians, the reality is that when a group is in a particularly vulnerable position, such as being involuntary patients on a psychiatric ward, where movement and access to information is restricted by the people who are containing them, some affirmative action is required to enable people to access their rights. Treating everyone equally does not create conditions of equality, as the Supreme Court of Canada has noted (e.g. Eldridge).

The criticism that the internal mechanism are flawed and that third party advocacy is required is a position which CAMH clients have always agreed with, and instructed the Empowerment Council to support. The EC's existence as an independent nonprofit funded by CAMH, and support for the relatively independent Psychiatric Patient Advocate Office has been how the EC has acted on this instruction (instruction resulting from an advocacy survey and consultation with CAMH clients). The independence of neither organization is perfect, but their work is available to be evaluated by the community they exist to serve, and in the case of the EC, they are under the control of this community. CAMH has not unduly interfered with the operation of these third party advocates, and if they did so the organizations could complain based on such concerns as those raised by the Committee. Clients did not support the Client Relations Office, for the same reason as the Committee. The Committee's perception that people who did not opt for these routes would be seen as "difficult" is a failure to perceive the reality that anyone who complains to anyone in the institution tends to be seen as difficult, but at least in this case the organization has officially supported them to do so, which is a decided step in the right direction.

Practical Roadblocks (Section 4.2.3.2)

The Report evaluates the shortcomings of creating a Canada Mental Health Act or a Canadian Human Rights Act, or legislation to be adopted by the provinces and territories. In all cases the jurisdiction of the federal government to set policy in this area is problematic.

The most promising possibility (dismissed by the Committee but supported by the EC) was the notion that draft legislation be created for the provinces and territories to consider, that complies with all of the rights granted under the Canadian Charter of Rights and Freedoms. The EC has recommended the creation of national mental health legal advocacy organization for such purposes.

For further information about the EC's position, see attached report to the Senate Committee on "Advocacy in Addictions and Mental Health".

HIGHLIGHTS AND RECOMMENDATIONS
Legal Issues (p.p. 9 - 12)

1. Uniform age for capacity:
   The EC has no position on this so far. It would be consistent to say however that rights should be maximized, therefore the age of consent should not be high, as capacity legislation could always be applied if required.

2. Professionals promoting communication with families: No. Promoting client access to information about their rights pertaining to advance directives and appointment of SDM's would be supported by the EC. To assume this would be family would be a grevious error, as many clients identify family as the source of their difficulties.

3. Private health information released to protect the patient or others should be restricted to the very barest of information in the case of clear and present danger.

4. Legislative and other support for advance directives enhances client choice and is consistent with evidence that shows that this improves clients well being. The EC would support this recommendation.

5. The law MUST NOT presume in favor of release of health information to a person's family, who may be the last people the individual wants having the information, making decisions, or in their life at all. Again, EC consultations with clients indicate that many identify family as the source of their problems. The Supreme Court of Canada has not favored the notion of implied consent. A neutral party or an advocate there for the client should be the decision maker failing client choice of another. The EC favors decision making by the individual with support, rather than readily removing that right.

6. The EC does not oppose Review Boards having the power to rule assessment if it uses this power to follow the directives of the SCC in Winko, to seek out information to support the accused.
   E.g. from Winko: The Review Board has a duty to investigate facts, which support release, as well as detention, "to search out and consider evidence favouring his or her absolute discharge or release subject to the minimal necessary restraints". The court or Review Board must gather and review all available evidence, which can include records, witnesses, and experts.

7. The EC opposes the Review Boards being given the power to order treatment. Civil mental health legislation exists for such cases, to add this to the CC creates a sort of double jeopardy for the person in this position. If doctors do not know the law the solution is education not downgrading the rights of people in the psychiatric system.

8. The EC opposes the creation of a new category of people who are both forensic AND correctional prisoners. Once convicted the person is not a forensic patient and can not be treated as such. The solution lies in the correctional system delivering adequate health care, not in placing prisoners in a position of having both a definite and indefinite sentence.