

Advocacy is considered to be one of the eleven areas for action in any mental health policy because of the benefits that it produces for people with mental disorders. The advocacy movement has substantially influenced mental health policy and legislation and is believed to be a major force behind the improvement of services. It is also responsible for an increased awareness of the role of mental health in the quality of life of populations.

(World Health Organization, 2003)

# Provincial Advocate *for* Children & Youth

## A Statement on the Future of the Psychiatric Patient Advocate Office

The Office of the Provincial Advocate for Children and Youth (the Advocate's Office), in its legislated role to elevate the voice of children and youth in the mental health system in Ontario, is very concerned about the announcement to divest the Psychiatric Patient Advocate Office (PPAO) to the Canadian Mental Health Association (CMHA) - Ontario. In providing advocacy, rights advice and education to psychiatric patients in Ontario, the PPAO also plays a critical role in protecting and promoting the rights and entitlements of young people with mental health issues. In 2009, 5.83% (170) of the people who received individual advocacy services were children, youth or transitional age young people that fall within the mandate of the PPAO.

Internationally, advocacy movements have emerged in recognition that people with mental health issues are especially vulnerable to serious rights violations and to involuntary long-term detention in psychiatric institutions<sup>i</sup>. Children are defined as a vulnerable group in need of protection and children/youth with mental health needs are especially vulnerable. In the last fifteen years, there were 27 Inquests in Ontario into the deaths of young people who were connected to the children's care systems, and many of these young people had diagnosed or undiagnosed mental health issues and/or significant special needs<sup>ii</sup>.

Placing people in locked facilities and forcing them to undergo treatment involves a fundamental loss of rights and freedoms that must be undertaken only with substantial precautions firmly in place. These precautions include mandated, independent, permanent advocacy services, such as the PPAO. The PPAO functions as a critical safeguard for vulnerable individuals who are involuntary detained, found incapable of consenting to treatment or the disclosure of personal health information, and/or are

subject to a Community Treatment Order (CTO). In fact, after the death in 2005 of Jeffrey James, a Coroner's Jury recommended the expansion of the safeguards provided by the PPAO<sup>1</sup>.

Given the vulnerability of young people in the mental health system and the tragic consequences that we have seen in Ontario when the care systems fail to meet their needs, the Advocate's Office recommends that any changes to the PPAO strengthen its role as an independent advocate and give serious consideration to the following four guiding principles.

### 1. Meaningful stakeholder consultation

To our knowledge, the decision to divest the PPAO to CMHA-Ontario was taken without public dialogue and meaningful stakeholder consultation with those who are most directly affected by this decision. Article 12 of the United Nations Convention on the Rights of the Child (CRC)<sup>2</sup>, to which Canada is a signatory, requires that the views of young people are given proper consideration and that young people have the opportunity to influence decisions affecting them. In **Every Door is the Right Door: Towards a 10-year Mental Health and Addictions Strategy** (2009), **Respect, Recovery, Resilience: Recommendations for Ontario's Mental Health and Addictions Strategy** (2010) and **Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy** (2011), the Minister's Advisory Group and the Ministry of Health and Long-Term Care (MOHLTC) have envisioned that a highly inclusive and participatory approach would be taken in the development of a comprehensive addictions and mental health strategy. The Advocate's Office is concerned that the proposal to divest the PPAO to CMHA-Ontario was not included in the public dialogue on mental health transformation and appears to deviate from the stated commitment to a participatory approach to mental health reform. Among many others, to our knowledge young people were not consulted.

*Prior to making any decisions to reform the rights advocacy component of the mental health system, the MOHLTC should engage in meaningful consultation with the children and youth in the mental health system, including young people in remote, Northern and/or First Nations communities. The Advocate's Office would be willing to facilitate this process with the goal of elevating the voice and experience of children and youth in its mandate.*

### 2. Greater independence and free of service conflicts

In the early 1980's in Ontario, there were a number of patient deaths that resulted in inquest recommendations and reports that highlighted the importance of advocacy as addressing power and communication imbalances and providing a perspective external to the care team. The Advocate's Office is concerned that the proposal to divest the PPAO to CMHA-Ontario will create real and perceived institution/service conflicts that will weaken the advocacy services provided by the PPAO. Specifically,

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<sup>1</sup> This expanded role included recommendations to provide rights advice and advocacy for all psychiatric facilities under the Mental Health Act (MHA) and to require psychiatric facilities, community and general hospitals operating schedule 1 facilities to notify the PPAO of restraints. The Jury also recommended that the PPAO's advocacy services be provided "on a 24/7 basis".

<sup>2</sup> Can. T.S. 1992, No. 3

we understand that the CMHA local branches provide mental health services, such as Community Treatment Orders, that may be the subject of rights advice and or rights advocacy delivered by the PPAO.

At the service level, agencies are facing rising costs and demands for service though their budgets are frozen by government and inflation reduces the resources they have available<sup>iii</sup>. The Advocates Office continues to be concerned that child and youth mental health services are being provided to the level of available resources rather than need<sup>iv</sup>. The Auditor General has also observed that the capacity of services “...is determined largely by the amount and allocation of ministry funding available rather than need.”<sup>v</sup> Although the recent announcement by the Ontario Government of additional funding for children’s mental health services is a step in the right direction, it will not be enough to meet the needs in the children’s mental health sector and the Advocate’s Office is not aware of any new funds being allocated for adult mental health services.

Moving the PPAO further within this resource-directed service system and where there continue to be competing service needs, would further jeopardize its independence and permanence. Specifically, as CMHA is faced with the increasing need for treatment services, it may have to make difficult decisions between meeting service needs and protecting the rights of clients.

*Any reforms to the mental health system should strengthen the independence of the PPAO by ensuring that it is independent from the sector that provides mental health services.*

*“For many Ontario youth, the economic downturn has added to the burdens of their lives and increased their invisibility and marginalization in society. During this period of fiscal restraint, any freezing or reduction of services to young people will leave even more vulnerable, hidden casualties with many unmet needs. It is in this environment that the importance of coming together as a province for young people becomes more than an aspiration – it is a necessity.”*

Office of the Provincial Advocate for  
Children and Youth

### 3. Safeguard the Rights of Young People

In the Mental Health and Addictions Strategy, the MOHLTC makes a commitment to focus on healthy development and Recovery<sup>3</sup>. It is important to note that advocacy to protect the rights of people in the mental health system also promotes mental health and is a key component of recovery. Indeed some

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<sup>3</sup> Although there are many definitions of Recovery, the Advocate’s Office understands it to be a deeply personal, unique process of changing one’s attitudes, values, feelings, goals, skills and/or roles. It is a way of living a satisfying, hopeful and contributing life, even with limitations caused by mental health issues. Recovery involves the development of new meaning and purpose in one’s life as one grows beyond the catastrophic effects of mental health issues.

consumer/survivors say that recovery from the consequences of the mental illness, including disempowerment and a lack of respect for rights, is sometimes more difficult than recovering from the illness itself.

**Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy** (2011) highlights the importance of person-directed services and states that people with lived experience of a mental illness or addictions bring their strengths, wisdom, and resilience to their care and must have a voice as essential partners in system design, policy development, and program and service provision, and the opportunity to make informed decisions about their personal care and support.

The system that safeguards the rights of those in the mental health system is critical to ensuring greater self-determination and self-management. This is because rights advisors and patient advocates perform the important function of assisting individuals in the mental health system to understand the decisions that are being taken with respect to their care and treatment, to make informed decisions about their care and/or to be active members of their treatment and support team, and to access the legal options that are available to them when they disagree with care providers.

*Strengthening rights-based advocacy is critical if the MOHLTC is to implement the vision set out in its Mental Health and Addictions Strategy.*

#### **4. Support systemic advocacy**

While the non-government organization (NGO) and service sector has a key role to play in individual and systemic advocacy in the mental health system, organizations that are tied to service provision may not be as free as independent agencies to lobby for changes in current laws or policies, to denounce rights violations, and to raise quality of care issues. The Advocate's Office is concerned that the ability of the PPAO to continue its important systemic law/policy reform and public education would be weakened if divested to CMHA-Ontario. It appears from subsection 3.03 (b) of the **CMHA Branch/Division Agreement** (2011) that in carrying out public policy and advocacy the service providing local branches and CMHA-Ontario "shall use all reasonable efforts to co-operate in the preparation of joint submissions to government bodies or other third parties". As such, divestment to CMHA-Ontario would severely limit the ability of the PPAO to engage in advocacy that is independent from the interests of the branches that deliver services.

For example, in 2009, the PPAO made a submission to the Ontario Human Rights Commission (OHRC) in which it indicated that Assertive Community Treatment Team (ACTT) care planning and CTO's "may overstep their therapeutic or medical mandate to restrict the liberties, dignity and freedom of consumer/survivors of psychiatric services on nothing more than the basis of their disability and perceptions that it is dangerous or unpredictable". In this submission, PPAO lists some of the various organizations that may operate an ACTT, including the branches of the CMHA, and recommends that the OHRC systemically address the human rights obligations of regulated professionals who participate in community treatment plans. Advocacy of this nature would clearly be difficult if the PPAO is divested to CMHA-Ontario.

In Ontario, inquests into the premature deaths of psychiatric patients are an important avenue to address a wide range of legal and social issues and are key to reducing the violence, discrimination and preventable deaths experienced by young people in the mental health system. Inquests can provide a forum to promote, through increased public scrutiny, increased accountability of service providers. Inquests are also a key mechanism in establishing standards of care and in obtaining commitments from service providers in the care system. In order for inquests to perform these important functions, advocacy organizations such as the PPAO must be able to continue to seek standing to elevate the voice of those in the mental health system and to advance the public interest. The divestment of the PPAO would create a conflict which would make it difficult for the PPAO to highlight, and advocate on, important public interest issues since CMHA could be the recipient of the recommendations that the PPAO is suggesting to the jury.

In addition to individual patient advocacy, it is the Advocate's Office understanding that the PPAO may also address systemic issues in a particular facility that have an impact on the quality of care, life and rights of patients. It would be difficult for the PPAO to highlight issues and advocate for change at facilities if it were divested to a service agency that could be the subject of its advocacy efforts. It would also be difficult for the PPAO to advocate for changes at facilities or agencies that the local CMHA branches may rely on for discharge services and placements for clients leaving CMHA.

Divesting the PPAO from the MOHLTC may also have the unintended consequences of losing the organizational memory and knowledge of nearly thirty years of advocacy and removing the significant infrastructure support, including human resources, information technology, and accounting, that frees up the PPAO to engage in systemic and individual advocacy. The PPAO's association with the MOHLTC also guarantees access to the bureaucracy for the purposes of advocacy.

*Any reforms to the mental health system must strengthen the ability of the PPAO to engage in independent, systemic advocacy that aims to improve the services at a particular facility or to advance important public interest issues.*

## **Recommendation**

**The Advocates Office recommends that the MOHLTC immediately withdraw its proposal to divest the PPAO to CMHA-Ontario and engage in meaningful stakeholder consultation with those most directly affected by the changes, including young people in the mental health system, with the goal of strengthening mandated mental health advocacy in Ontario by ensuring that it is independent and free of service conflicts, safeguards the rights of young people, and supports systemic public-interest advocacy.**

July 14, 2011

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<sup>i</sup> Funk, M., Minoletti, A., Drew, N., Taylor, J. and Saraceno, B. (2005). Advocacy for mental health: Roles for consumer and family organizations and governments. *Health Promotion International*, 21(1), 70-75.

<sup>ii</sup> Hotrum, A. (2010). *Inquests and young people in care: The involvement of the Advocate's Office*. Office of the Provincial Advocate for Children and Youth, Ontario, Canada.

<sup>iii</sup> Office of the Provincial Advocate for Children and Youth. (2009/2010). *We're all in it together: Report to the Legislature*, Ontario, Canada.

<sup>iv</sup> Office of the Provincial Advocate for Children and Youth. (2011). *Statement on Child and Youth Mental Health in Ontario*, Ontario, Canada.

<sup>v</sup> Auditor General of Ontario. (2008). *Annual Report of the Office of the Auditor General of Ontario*, Ontario, Canada.