COMMITTAL UNDER THE MENTAL HEALTH SERVICES ACT

These materials were prepared by Christopher Boychuk, of McDougall Gauley law firm Saskatchewan, Saskatchewan for the Saskatchewan Legal Education Society Inc. seminar, Advising the Elderly Client; September 2003.
I. INTRODUCTION

The Mental Health Services Act S.S. 1984-85-86 c. M-13.1 (the "Act") generally governs the provision of mental health services in the Province of Saskatchewan. This can include psychiatric in-patient services, clinical services in the community, residential services, rehabilitation services, public education research and prevention here in Saskatchewan. The Minister may also approve homes for the supervised accommodations of persons who require accommodation because of a mental disorder.

In order to be eligible for mental health services in Saskatchewan a person must be a beneficiary under The Saskatchewan Hospitalization Act or The Saskatchewan Medical Care Insurance Act.

In addition to those broad based aims the Act also makes provisions for the involuntary detention and treatment of persons suffering a mental disorder. This paper will address the circumstances under which an individual may be detained and treated involuntarily under the Act and the rights and protection such an individual may have.

II. INVOLUNTARY OUT-PATIENT EXAMINATION

Part V of the Act deals with involuntary detention and treatment. Pursuant to section 18 of the Act a person may be apprehended for an out-patient examination, without consent, for the purposes of determining whether the person should be admitted to an in-patient facility. This may be done on the issuance of a certificate by an examining physician. The apprehended person is to be examined by a physician with admitting privileges to an in-patient facility. The requirements for the issuance of this certificate are;
(a) the examining physician has formed the opinion that the person is suffering from a mental disorder and requires a psychiatric examination to determine whether he/she should be admitted to an in-patient facility;

(b) the person refuses to submit to an examination;

(c) arrangements have been made where the physician has admitting privileges to an in-patient facility.

The definition of mental disorder in the Act is;

"mental disorder" means a disorder of thought, perception, feelings or behaviour that seriously impairs a person's judgment, capacity to recognize reality, ability to associate with others or ability to meet the ordinary demands of life, in respect of which treatment is advisable.

Once a certificate is issued by the examining physician in the prescribed form the certificate is sufficient authority for the apprehension and the transportation of that person to the place where the examination is to be conducted. The physician issuing the certificate must have personally examined the individual and have formed the opinion the person is suffering from a mental disorder within the meaning of the Act. The certificate is to set out the facts on which that opinion is based and is valid for seven days. That person cannot be apprehended on a certificate after the expiry of seven days from date on which the examination was made.

Once apprehended, the Act requires that the psychiatric examination be conducted within 24 hours after the person has arrived at the facility where he/she is to be examined. The purpose of the psychiatric examination is to determine whether the person ought to be committed pursuant to section 24. Accordingly, a certificate for an involuntary out-patient examination generally only issued where there is a concern that, by reason of the person's mental disorder, he is unable to care for himself and is at risk of causing harm to himself or to others.

There is also a provision in the Act to have involuntary psychiatric examinations carried out on the order of a Provincial Court Judge. Any person, who has reasonable and probable
grounds to believe that another person who refuses to submit to medical examinations and is suffering from a mental disorder, may lay information before a Judge of the Provincial Court. Upon being satisfied that the person is in need of a psychiatric examination the Judge may, after making arrangements with the physician who has admitting privileges to an in-patient facility, issue a warrant for the apprehension of the person named in the warrant.

Additionally, a constable or a peace officer who has reasonable and probable grounds to believe that a person in a public place is suffering from a mental disorder and causing a disturbance may apprehend that person without warrant and convey them to a place for the psychiatric examination.

The person who has been apprehended for an involuntary psychiatric examination either pursuant to a certificate, warrant or by a peace officer has the right to be informed promptly of the reasons for his apprehension and is entitled to receive a copy of the certificate, warrant or order under which he has been apprehended or detained. A copy of the certificate, warrant or order is also to be provided to the official representative appointed under the Act for that mental health service region.

III. IN VOLUNTARY COMMITTAL

Section 24 of the Act allows for the involuntary detention and treatment of a person in an in-patient facility for a period of 21 days on the issuance of the certificates of two physicians, one of whom must be a psychiatrist. The certificates issued by the physicians must be based on an examination of the person named in the certificate which has taken place within the immediately proceeding 72 hours. On the basis of that examination and any other investigations that the physician has done, a certificate may be issued if the physician has probable cause to believe that;
(a) the person is suffering from mental disorder as a result of which he/she is in need of treatment or care which can only be provided in an in-patient facility;

(b) as the result of the mental disorder the person is unable to fully understand and make an informed decision regarding his/her need for treatment;

(c) as a result of the mental disorder the person is likely to cause to himself/herself or to others or to suffer substantial mental or physical deterioration if he/she is not detained in an in-patient facility.

Upon the issuance of a certificate the person can be apprehended and conveyed to an in-patient facility where they may be detained for a period of 21 days.

The Act also allows for such detention on the certificate of a single physician where it is not reasonably practical to obtain the certificate of another physician a person a single can issue a certificate to detain a person for the of maximum three days. If during the three day detention another physician issues a certificate the person may be detained for the further 21 days.

The certificates may be renewed for excessive of 21 day periods provided they are issued by two physicians at least one of whom is a psychiatrist and the certificates are issued prior to the end of the proceeding 21 day period.

A certificate issued under the section will expire in seven days if the person is not apprehended and detained within that period.

**IV. COMMUNITY TREATMENT ORDERS**

As an alternative to the detention in an in-patient facility, a psychiatrist who has examined a person may issue a community treatment order for a person suffering a mental disorder. An order can be issued if the following criteria are met;

(a) the person is suffering from a mental disorder requiring treatment or care;
(b) if the treatment or care is not provided the person is likely to cause harm to himself or to others or suffer substantial deterioration in his condition;

(c) the mental services the person requires exist in the community where he resides can be made available to that person;

(d) as a result of a mental disorder the person is unable to fully understand and make an informed decision regarding his need for treatment;

(e) if the person is capable of complying with the requirements of the order;

(f) the person must have been subject to a previous community treatment order or have been previous detained in an in-patient facility for a minimum period of time within the proceeding two years.

Where a person who subject of the community treatment order fails to comply, the attending physician may order that the person be apprehended for the purposes of being examined to determine whether he/she should be detained in an in-patient facility pursuant to section 24.

V. INVOLUNTARY TREATMENT

The Act authorizes, at section 25(2) the treatment of a patient detained from a certificate issued pursuant to section 24 without the patient's consent. The attending physician is permitted to prescribe any diagnostic procedures necessary to determine the existence and nature of the mental disorder and to administer any medication or other treatment necessary to treat the mental disorder. The attending physician is obligated, during the course of ongoing diagnosis or treatment, to consult with the patient and to explain the purpose, nature and affect of any proposed treatment and give consideration to the views expressed by the patient as to the proposed treatment and the patient's choice of therapist. The extent that such consultation will take place will depend on the nature of the patient's mental condition.
There are limits on the types of treatment that may be administered to involuntary patient. The Act prohibits the administration of psychosurgery or experimental treatment to such a patient. Other forms of treatment may be designated as "special treatments," in the regulations that are either prohibited or subject to prescribed procedures. Electroconvulsive therapy has been designated as a special treatment and may not be administered to a involuntary patient except in accordance with the detailed procedures set out in the regulations.

VI. VOLUNTARY ADMISSION

The Act does have provision for an individual, at his own request, to receive assessment and treatment services as an out-patient, subject to the availability of services. The request he may not be made by the physician. An individual may also request treatment at an in-patient facility however; in that case, arrangements must be made with a physician with admitting privileges to that in-patient facility. In the case of voluntary admission no treatment may be carried out except with patient's consent or, where he is not competent to consent, with the consent of his nearest relative.

VII. RIGHT TO APPEAL

The Act mandates that the Minister shall appoint a review panel for each mental health service region. The review panel must consist of not less than three persons, one of whom is to be a physician and the other a solicitor. The review panel investigates and hears appeals submitted by, or on behalf of, individuals who have been detained involuntarily under section 24 where has been the subject of a community treatment order.

Upon a certificate being issued pursuant to section 24 or a community treatment order being made, the attending physician must give written notice of that fact to the patient, his
nearest relative and to the official representative for that mental health service region. The official representative, on receiving notice of the certificate or order, must visit the patient as soon as reasonably practical and advise the patient of his right of appeal under the Act. The official representative is also to provide any assistance considered necessary to enable the patient to initiate the appeal.

There is provision in the Act that notice to the nearest relative may be dispensed with where disclosure of the same may result in endangerment of the patient's health or safety or may constitute an unreasonable invasion of his privacy.

Once the appeal has been initiated, the review panel is obligated to immediately carry out an investigation and to invite the Appellant or any other persons considered by the review panel to be affected by the appeal to testify or to produce evidence. The members of the review panel have all the powers of commissioners pursuant to *The Public Inquiries Act*, including the power to summon witnesses.

At the hearing the patient is provided with the following procedural rights by the Act:

(a) to see any written evidence placed before the review panel;

(b) to be personally present when any oral evidence is presented to the review panel;

(c) to adduce evidence;

(d) to cross examine witnesses; and

(e) to be represented by counsel.

Upon hearing the appeal the chairperson of the review panel must make a written report of the decision of the review panel and, before the end of the third business day following the hearing of the appeal, transmit the report to the patient, the nearest relative or the official
representative, where the official representative submitted the appeal, and to the officer in charge of the facility.

The patient has a further right of appeal to the Court of Queen's Bench. The appeal must be filed within 30 days of the date of the decision of the review panel. The appeal to the Court is instituted by way of notice of motion and must be served upon the director of mental health services appointed by the Minister, the officer in charge of the facility where the patient is being held and any other persons that the Court may direct. The appeal must be supported by an affidavit of appellant setting out the facts in support of the appeal. The Court may hear any further evidence that it feels is necessary. The decision of the Court of Queen's Bench is not subject to any further appeal.