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Ignoring serious physical deterioration continues

A man suffering from schizophrenia develops a serious heart condition. He shows classic symptoms of the disease, like shortness of breath and swollen and puffy features, not helped by a huge belly (the result of olanzapine; he has since been switched to Risperdal).

Because of his mental disorder, however, he's paranoid about doctors and paranoid about hospitals, and doesn't want to go near them.

He makes light of his failing physical health instead, although at one point he does call a pharmacist. The pharmacist rightly advises him to see a doctor. He would need to see a doctor even to get a prescription.

A psychiatrist and case worker, at the desperate urging of his family, finally go out to see him. The psychiatrist takes at face value his protestations that he's doing all right, his heart condition is under control, and that others shouldn't interfere.

The psychiatrist declines to sign a first certificate which would bring him into hospital.

A prior note by his regular case-worker that his fingertips are turning blue doesn't seem to make any difference.

The man's condition grows worse. He has trouble getting out of bed. He does manage, however, to get dressed to go to an ATM machine to get some money. He collapses on the way and dies, only a couple of weeks after the psychiatrist had seen him.

This is the disturbing 2009 Ben Williams case, recounted in the *NSSS Advocacy Bulletin's* March 2010 issue, with a follow-up February 2011.

It illustrated the failure to properly use the Mental Health Act which does provide for such a circumstance, for someone with a mental disorder. The Act allows for involuntary admission not just to prevent substantial mental deterioration but also to prevent substantial physical deterioration.

A coroner's investigation into the case, undertaken at the request of the North Shore Schizophrenia Society, came up with a series of recommendations. The problem, failure to deal with physical deterioration, was supposed to have been dealt with system-wide at the time, that is, for all of Vancouver Coastal Health Authority.

We're sorry to say, however, such cases of mental health services failure continue to occur.

Here's a recent case history:

A man with what appears to be schizophrenia is obviously ill, with delusions and obsessions, sometimes ranting in scrambled sentences, and his mind from time to time wandering off altogether. Occasionally he would go into a mute phase. He had been on the street for years, finally ending up sleeping on his sister's sofa.

He complains of a lump under his ear. She gets him to St. Paul's, where the lump turns out to be a swollen lymph gland. He's diagnosed with throat cancer and referred to the Cancer Clinic.

Effect on understanding not taken into account

The sister points out that he's also quite psychotic and asks St. Paul's if they could keep him for a while to look after his mental illness. The answer is negative.

"Well, he's not going to kill anybody," is the explanation, one that completely misreads the Mental Health Act.

There is a 90 per cent chance of radiation dealing successfully with the throat cancer. He thinks, however, radiation will kill him. "Hiroshima, Nagasaki!" he exclaims.

The Cancer Clinic gets to the point of creating a mask for him, in preparation for the procedure. With the mask in hand, he bolts.

He eventually shows up again, and the sister, through Car 87 (Mental Health Emergency Services in Vancouver) gets him involuntarily admitted in the psychiatric ward at Vancouver General.

They treat him so that he's no longer agitated and fussing, but underneath the apparent calm he's still quite psychotic.

The sister asks about the throat cancer treatment, only to be told that he's fine now and able to make up his own mind about it. It's the same kind of mistake the psychiatrist made in the Ben William's case.

Much against the sister's wishes, he's discharged.

Swelling now shows up in the lymph node under the other ear.

The discharge, without taking into account how the underlying psychosis affects his understanding of the cancer and without taking steps accordingly, means the cancer will develop unchecked.

Or take another case:

A woman in her sixties has elaborate and paranoid delusional systems, where malicious forces, working with satellites, electronic chips, magnetic fields and other sinister mechanisms, are doing bad things to her. She's barricaded her apartment and then barricaded her bedroom in her apartment, to protect herself.

She's losing her teeth, but won't go to a dentist. She suffers pains in her head and in her hands, can't sleep for more than two hours at a time when twists of pain wake her up, and has a prolapsed internal organ, which also often causes her pain.

She won't. however, go to a doctor, just like Ben Williams. She fears they'll put her under and, while she's unconscious, will insert more chips into her body.

She ascribes all of her physical ills to those sinister forces out there.

At one point her son manages to get her to go to A2 at Lions Gate Hospital, but when asked about particular delusions, she pretends she doesn't have them, in order to be discharged.

NSSS's support coordinator calls Acute Home Based Treatment to see if they'll go out and help her, but they're a "voluntary program," so nothing is done.

The woman's physical deterioration continues.

NSSS has other case histories on this issue, including one where a young man, because of delusional paranoia, refuses to have a detached retina fixed and loses the use of an eye.

Section 22 of the Mental Health Act says explicitly, as we've already mentioned, that involuntary admission can be used "to prevent the person's… substantial mental or *physical* deterioration." [The italics are ours.]

It also allows for involuntary admission for "protection of the person," which would include protection of harm from serious physical illness.

Service providers need to understand what this means.

Ministry of Justice declines to make required change

The B.C. Ministry of Justice has declined to undertake a simple reform in policy that would hold errant police officers at least a little more accountable in the fatal shooting of those with a mental illness.

It's another sad chapter in the heartbreaking story of Paul Boyd, the Vancouver man, suffering from bipolar disorder, who was shot eight times by police officer Lee Chipperfield in Vancouver's South Granville district in 2007. The last shot, the one that killed him, was fired when Boyd was on his hands and knees.

A special prosecutor, Marc Jette, decided, however, charges would not be laid. The implications of his decision were disturbing. It meant that, regardless of the circumstances, a police officer could always claim mistaken perception as an excuse for wrongdoing – "I didn't see it…, I didn't hear it…., I felt that….It seemed to me…." – without the check of a Crown prosecutor's questioning at trial.

A detailed analysis of Jette's questionable decision can be found in the *Bulletin's* November 2013 issue.

We pick up the story from there.

NSSS, having documented the holes in Jette's decision, contacted the Ministry of Justice to express concern. The Ministry rarely intervenes in such instances, because a special prosecutor is retained expressly to make a final decision independent of the Ministry..

NSSS nevertheless felt the faults in the decision were so significant, a review was called for.

The Ministry responded that only the investigating agency, in this case the Alberta Serious Incident Response Team (ASIRT), could file such an "appeal." Contacted by NSSS, ASIRT ultimately decided they would not appeal the decision, because the Ministry had already shown it had no intention of intervening, so what would be the point?

It was a perfect Catch 22.

NSSS had simultaneously brought to the attention of the Ministry that the special prosecutor had omitted a crucial step in his consideration of the case. He had cited the threshold for laying a charge as a "substantial likelihood of conviction," as laid out in the Crown Counsel Policy manual.

There is, however, a broader standard as well, which can apply in "exceptional circumstances," namely a "reasonable prospect of conviction." This standard Jette had ignored.

NSSS argued that the shooting of a troubled mentally ill person, who wasn't a criminal, and by a police officer representing the authority of the state, did indeed constitute "exceptional circumstances."

Moreover, whether the special prosecutor might have agreed with this argument or not, he had a duty at least to consider if the second standard applied.

The ministry official in charge responded, in effect, that, breach of process or not, Jette had independent discretion, and his choice of an assessment standard was final.

NSSS calls for use of "reasonable prospect..."

This only begged the larger question, however, of how such cases should properly be handled in the future.

NSSS proposed that the broader standard for laying a charge, a "reasonable prospect of conviction," be explicitly mandated in instances involving police use of firearms with the mentally ill.

The ministry replied that the guidelines had only recently been reviewed, by a Queen's Counsel no less, and given his stamp of approval.

This, of course, was a non-answer, for revisions to government guidelines can be made at any time if there is a practical rationale for it.

NSSS went to the trouble of procuring the documentation of that review. As it expected, nowhere, in the quite detailed review, was the police use of firearms with the mentally ill mentioned, much less discussed.

Appropriate standard of accountability needed

Let's now put all this in context.

NSSS sees the police, who are often first responders, as friends of those with mental illness. The Society urges family members dealing with a crisis to call on them, does educational work with police forces, and works closely with police officers in crisis situations when the occasion arises..

Nor was the Society presuming guilt on the part of Constable Chipperfield, in the Boyd case.

It's important, though, that when apparent wrongdoing occurs, it be dealt with appropriately – in these instances with a more appropriate standard for getting cases to court where they would benefit by the discipline and openness of a trial, as different from subjective speculation by prosecutors on what might happen.

It may come as a shock, as well, to learn that in every other province in Canada, "reasonable prospect of conviction" or the equivalent "reasonable likelihood of conviction" is the standard for laying a change, not only in exceptional circumstances, but for all cases.

The only rationale for B.C.'s narrower first standard is to save money on court cases that don't ultimately lead to conviction. The saving of a few dollars, however, should not stand in the way of holding police officers properly accountable in their use of firearms and, by doing so, adding protection for the vulnerable mentally ill.

NSSS also knows, from long experience with failures in mental health services, that however much effort is put into other measures, like better training, nothing is likely to be adequate without some kind of accountability.

The Ministry of Justice has some serious rethinking to do.