Rethinking Legislative Protection for Youth with Severe Substance Use Disorders in Manitoba

by

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Abstract

The Manitoba *Youth Drug Stabilization (Support for Parents) Act* provides for a brief period of commitment of youth with severe substance use disorder. The Act is intended to stabilize the youth and develop a treatment plan which the youth can voluntarily initiate after stabilization. However, the nature of substance use disorders and resultant short term and long-term effects excludes some youth from the protection intended by the *Youth Drug Stabilization (Support for Parents) Act*. This is because even after compulsory stabilization, they lack cognitive capacity to process the information necessary to make autonomous treatment decisions or voluntarily follow through on treatment plans, due to the severity of their condition.

This research paper argues that the *Youth Drug Stabilization (Support for Parents) Act (YDSA*) should be expanded to ensure involuntary treatment for youth, because of the effects of severe substance use disorders on their health and level of autonomous functioning. Involuntary treatment will provide the necessary medical care needed to restore their autonomy and other individual rights. The research paper acknowledges some risks that are associated with involuntary treatment and therefore proposes a responsive communitarian approach to balance the autonomy of youth and the obligation to protect them for the common good of society. The responsive communitarian approach provides a valuable framework for rethinking the current provisions of the *Youth Drug Stabilization (Support for Parents) Act* to better protect youth with severe substance use disorders. In conclusion the research paper will recommend new directions to providing involuntary treatment care, which focus on the best interest of the youth. This includes thorough capacity assessment processes during the period of stabilization to establish the youth's history as well as adequate acknowledgement of the consequences and risks that may occur if treatment is not received.

Keywords: Human Rights, Involuntary Care, Substance Use Disorder, Youth, Youth Drug Stabilization Act.

I. Introduction

Youth is a fluid term, describing the transitional years between the dependence of childhood and the independence of adulthood (UNESCO, 2016). Its fluidity means that there is no universally accepted age category for youth. However, for statistical purposes, the United Nations categorizes youth as persons between 15 and 24 years of age, without prejudice to other definitions by Member States[1].

Across provinces and across various departments in Canada, youth consistently refer to persons below 18 years of age. The *Youth Criminal Justice Act,* which governs the youth justice system considers the age cohort between 12 and 17 years as youth. Similarly, the *Advocate for Children and Youth Act* which empowers the Manitoba Advocate for Children and Youth recognizes youth as persons under 18. This research paper also defines youth as persons aged below 18 years of age, following the *Youth Drug Stabilization (Support for Parents) Act* analyzed in this paper.

Substance use disorder is one of the three most common types of mental illnesses experienced by Canadian youth and young adults between the ages of 15–24 years (Pearson et al, 2013). Research shows that young people are uniquely susceptible to the short term and long-term effects of substance use. These include poor brain maturation and long-term cognitive impairment of certain functions (Guerri & Pascual, 2019; Casey & Jones, 2010). Research also shows that the most effective way to help those (including youth) with severe substance use problems, is to provide early treatment and interventions that would prevent longer term consequences (US Department of Health and Human Services, 2016; Winters & Arria, 2011).

In line with actions to intervene and mitigate adverse outcomes of substance use, the province of Manitoba established the *Youth Drug Stabilization (Support for Parents) Act,* in 2006. The *Youth Drug Stabilization (Support for Parents) Act*, hereafter referred to as the YSDA, is legislation targeting youth with substance use disorders. It allows for short-term stabilization for youth in Manitoba below 18 years of age, who are causing serious self-harm through severe and persistent substance abuse. Under the YDSA, youth can be placed in involuntary detention for up to seven days for the purpose of detoxification and stabilization. In addition, mental health professionals work together with the youth to establish a treatment plan which the youth can initiate voluntarily upon discharge (*Youth Drug Stabilization (Support for Parents) Act*, S.M. 2006).

However, the nature of substance use disorders excludes some youth from the protection intended by the YDSA. This is because these youth suffer from addictions so severe, that even after the compulsory

[1] See UN Report of the Advisory Committee for the International Youth Year (A/40/256, para. 19)

stabilization period, they may still be unable or unwilling to engage voluntarily in mental health and or substance addictions treatment. Therefore, this research paper aims to address the following question: *How can youth with severe substance use disorders, whose lives are at imminent risk from harm and lack capacity to make treatment decisions, receive greater protection under the YDSA?*

This paper analyzes the ethical approaches to involuntary treatment of youth with severe substance use disorders. It argues that in situations where substance use disorders have impacted a youth's health, and level of autonomous functioning, the YDSA must move beyond the traditional focus on individual freedoms and be expanded to ensure that the youth are protected from further harm. The YDSA must also ensure that these youth receive the highest level of medical care to restore their autonomy. Further, it departs from the involuntary treatment debate which stems from the tension between individual autonomy and the common good, to a responsive communitarian approach to involuntary treatment care. The responsive communitarian framework establishes a balance between the autonomy of youth and the obligation to protect them for the common good of society. It therefore provides a valuable framework for rethinking the current provisions of the YDSA to better protect youth with severe substance use disorders. In conclusion, the research paper provides recommendations for consideration that place the best interest of the youth at the center of involuntary treatment care, to ensure that the specific needs of the youth are adequately addressed.

II. Methodology and Outline

This research paper draws on theories from philosophy and law to answer the research question. The advantage of using an interdisciplinary approach is that it incorporates multiple viewpoints and provides a holistic understanding of the concerns that persist when considering appropriate measures of intervention for youths with severe substance use disorders as well as ways to mitigate such concerns.

Chapter one presents review of related literature. This section provides information about substance use disorders, its definition, causes and consequences. The Manitoba context is detailed in chapter two, including statistics about the demographic most affected. The current provisions of the *Youth Drug Stabilization (Support for Parents)* Act are also discussed and analyzed here. The analysis of the YDSA lays the groundwork for the voluntary treatment versus involuntary treatment debate discussed in Chapter three. Chapter three presents the case for and against involuntary treatment for youth from two contrasting ethical perspectives: libertarianism and communitarianism and provides justifications for a responsive communitarian approach. In chapter four, the justifications are used to illustrate what a responsive communitarian approach of rethinking the YDSA would look like. Recommendations are

provided in chapter five. A key recommendation is that the best interests of youth as provided under the United Nations Convention on the Rights of the Child (UNCRC) must be at the center of involuntary treatment care. This will require adequate capacity assessment processes of youth during the period of stabilization to establish their history and the seriousness of the risks associated with the proposed treatment, as well as the consequences if treatment is not provided.

III. Reflection on Practicum at Manitoba Advocate for Children and Youth

In the fall of 2022, I completed my practicum at the office of the Manitoba Advocate for Children and Youth (MACY). MACY is an independent office of the Manitoba Legislative Assembly which represents the rights and interests of children, youth, and young adults throughout Manitoba who are receiving, or should be receiving, provincial public services. The Manitoba Advocate is empowered by the Advocate for Children and Youth Act (ACYA). It is also guided by the United Nations Convention on the Rights of the Child (UNCRC) to make recommendations to improve the effectiveness and responsiveness of services provided to children, youth, and young adults.

In 2018, MACY released a special report titled: *In Need of Protection: Angel's Story*. The report highlighted one young girl's struggle with repeated sexual assault from a very young age. Unfortunately, attempts to cope on her own with the ongoing trauma led to substance addiction, and persistent thoughts of suicide. Over the course of her 17 years, she would access the youth addiction stabilization unit. However, due to the lack of follow-up care and coordination in these services, the young girl died tragically from an accidental substance overdose. She was only 17 years old (MACY, 2018).

Angel's story exemplifies the ongoing crisis for many children and youth in Manitoba. In several special reports and public statements that have followed,[2] the Manitoba Advocate for Children and Youth

[2] See The Manitoba Advocate's Statement of Concern. A Call to Action: A Mental Health and Addictions System to Meet the Needs of Children and Youth https://manitobaadvocate.ca/wp-content/uploads/Advocates-Statement-of-Concern-MH-Addictions.pdf -

Manitoba Advocate for Children and Youth. (2019). *A Place where it feels like home: The story of Tina Fontaine*. Winnipeg: MB. Manitoba Advocate for Children and Youth. https://manitobaadvocate.ca/wp-content/uploads/2019/07/Tina-Fontaine.pdf

Manitoba Advocate for Children and Youth. (2020a). *The slow disappearance of Matthew: A family's fight for youth mental health care in the wake of bullying and mental illness*. Winnipeg: MB. Manitoba Advocate for Children and Youth. https://manitobaadvocate.ca/wp-content/uploads/MACY-Special-Report-The-Slow-Disappearance-of-Matthew-Feb2020.pdf

has noted that a high number of youths with severe substance use disorders fall beyond the scope of substance addictions programs currently available in province (MACY, 2019; MACY, 2020a; MACY, 2020b). The argument here is that the available services have not worked because this group of youth suffer from severe addictions which make them unable or unwilling to engage in treatment voluntarily (MACY, 2019). Therefore, the Manitoba Advocate continues to negotiate for a review and reform of the province's legislation for youth with substance use disorders. This includes involuntary treatment options for youth with severe substance use disorders, as a means of engaging them in potentially life-saving treatment (MACY, 2018; MACY, 2019a; MACY, 2019b).

It is important to note here that this research paper was informed by the duties I undertook during my practicum placement at MACY. I agree with the Advocate's recommendation that *the Youth Drug Stabilization (Support for Parents)* Act must be expanded to include involuntary treatment care to ensure protection for youth with severe substance use disorders. However, given the risks of human rights violations associated with involuntary treatment, there must be a clear framework that ensures a balance between the autonomy of youth and the obligation to protect them for the common good of society. To meet this concern, this research paper bolsters the involuntary treatment recommendation by providing a responsive communitarian framework which balances the rights of youth to autonomy and the common good to ensure effective functioning of society. A responsive communitarian framework thus recenters the focus of youth substance addictions treatment from an individual rights perspective to one that considers the moral responsibility to ensure protection for vulnerable youth. In so doing, the research paper strengthens the recommendation for involuntary treatment care and the review of the *Youth Drug Stabilization (Support for Parents) Act* to better address youth substance addiction in Manitoba and in general.

Chapter 1: Literature Review

1.1. Substance Use Disorders in Youth

Substance use disorders are neuropsychiatric disorders, characterized by a recurring desire to use substances and a loss of control over their consumption despite harmful consequences (Jordan &

Manitoba Advocate for Children and Youth. (2020b). *"Stop giving me a number and start giving me a person": How 22 girls illuminate the cracks in the Manitoba youth mental health and addiction system*. Online: https://manitobaadvocate.ca/wp-content/uploads/MACY-Special-Report- Suicide-Aggregate-2020.pdf

Andersen, 2017; Zou et al., 2017). According to the American Psychiatric Association, people with substance use disorders have an intense focus on using certain substance(s) such as alcohol, tobacco, or illicit drugs, to the point where their ability to function in day-to-day life is impaired (American Psychiatric Association, 2023).

Substance use disorders range from mild to severe in severity, duration, and complexity (U.S. Department of Health and Human Services, 2016). For mild to moderate substance use disorders, treatment through the general health care system may be sufficient. However, severe substance use disorders (addiction) may require more specialized treatment (U.S. Department of Health and Human Services, 2016).

Substance use disorders typically emerge during adolescence and often (but not always) progress in severity and complexity with continued substance misuse (Compton et al., 2007; Hasin et al., 2007). According to Guerri and Pascual (2019), adolescence is a stage of brain development during which vital structural and functional changes in synaptic plasticity and neural connectivity occur in different regions of the brain. This includes the cortical and subcortical structures,[3] which undergo changes in white and gray matter densities concurrently with modifications in some neurotransmitter[4] systems and hormone secretion, significantly influencing the refinement of certain brain areas and neural circuits (Guerri & Pascual, 2019).

Substance use is one of the most common risky behaviors in adolescence. The inherent risk of substance use disorders in youths lies in its effect on brain development and resultant behavioral and cognitive disfunction. Consequences can be harmful to academic success (Duncan et al, 2021) cause problems establishing and maintaining social relationships (Whitley et al, 2018; Vaillancourt & Boylan, 2015); increase morbidity and mortality (Walker et al; 2015); as well as negatively affect overall brain

[3] The subcortical structures include the deep gray and white matter structures namely the corpus callosum, hippocampus, amygdala, thalamus and putamen. See Paquette, N., Gajawelli, N., & Lepore, N. (2020) Structural neuroimaging. In Anne Gallagher, Christine Bulteau, David Cohen, Jacques L. Michaud, Handbook of Clinical Neurology, Elsevier, Volume 174, Pages 251-264,
https://doi.org/10.1016/B978-0-444-64148-9.00018-1.

[4] Neurotransmitters are endogenous chemicals that allow neurons to communicate with each other throughout the body. They enable the brain to provide a variety of functions, through the process of chemical synaptic transmission. These endogenous chemicals are integral in shaping everyday life and functions. See Sheffler, Z. M., Reddy, V., & Pillarisetty, L. S. (2022). Physiology, Neurotransmitter. In: StatPearl. Treasure Island (FL): StatPearls Publishing. Retrieved from: https://www.ncbi.nlm.nih.gov/books/NBK539894/

development and provoke mental health related burdens in youth (Jahan & Burgess, 2022; Copeland et al, 2015; Monasterio, 2014).

1.2. Causes of Substance Use Disorders in Youth

A combination of psychosocial factors at individual, social and environmental levels contribute to the high degree of co-morbidity between youth substance addiction and mental illness. Individual factors include exposure to traumatic events (violence and abuse), family history of substance addiction, prenatal exposure to alcohol and other substances, as well as prevailing mental illnesses (such as depression) (Ross & Morrison, 2020). Furthermore, studies on Adverse Childhood Experiences (ACEs) find that multiple adverse experiences in childhood or adolescence can result in an increased risk of substance abuse and mental health challenges (Afifi et al, 2017; Finkelhor et al, 2013). Social factors include peer substance use, violence and abuse, early involvement in romantic relationships, psychological disorders, and trauma (Henneberger et al, 2021; Bountress et al., 2017; Glantz & Pickens 1992). Environmental factors include family dysfunction, poverty, homelessness, and involvement in systems including child and family services, youth justice or the mental health system (Hawkes et al, 2002).

1.3. Consequences of Substance Use Disorders in Youth

Some of the most common consequences of substance use disorders in youth include:

- Poor academic performance: substance use disorders lead to a low level of commitment to education, resulting in learning problems, absenteeism from school and other activities, poor academic performance due to cognitive and behavioral problems and a high possibility of dropping out of school (Duncan et al, 2021).
- Physical Illness: Youth with substance use disorders face an increased risk of exposure to diseases and other health-related consequences such as accidental overdoses, increased risk of death through suicide, homicides, and accidents. It also results in homelessness, additional healthcare costs, personal and communal distress (Jahan & Burgess, 2022; Copeland et al, 2015; Walker et al; 2015; Monasterio, 2014; Whitford et al., 2013).
- Co-occurring mental illness: Many youth who develop substance use disorders are likely to present with concurrent mental health problems also known as co-occurring disorders or comorbidity (Aderibigbe et al., 2022; Richert et al., 2020; NIDA, 2022; Gray & Squeglia, 2017; Kelly & Daley, 2013; Ross & Peselow, 2012). Some of the most common mental health problems include attention deficit hyperactivity disorder (ADHD), borderline personality disorder, psychotic illness, conduct

disorder (CD), depression, dysthymia, schizophrenia, bipolar disorder, and anxiety (NIDA, 2022). Symptoms of a substance use disorder may present like a mental health disorder, and vice versa (Child Mind Institute & Center on Addiction, 2019).

- Delinquency: Studies suggest that substance use, and delinquency reinforce each other (National Crime Prevention Centre, 2009). Butters & Erickson (2006) found in Toronto that for youth who were regularly absent from school, and those who were in custody, selling drugs significantly increased the odds of committing gun violence against others. Moreover, the National Crime Prevention Center (2009) reported that more than half of offenders consumed alcohol or drugs before committing a sexual assault. Thus, many youth with substance use disorders eventually end up under arrest and involved with the juvenile justice system due to their involvement in criminal acts for the purpose of supporting their addiction (Saladino et al., 2021; Karofi, 2012). Such criminal acts include both violent and non-violent offenses, such as theft, physical aggression, prostitution, sexual aggression, gang involvement, drug possession, drug dealing, and drug trafficking (Bailen et al, 2019; Phillips, 2012).

1.4. Substance Use Disorders among Youth in Manitoba

In Manitoba, substance use is more common among youth than in older populations (Cooke et al., 2020). In a 2016 - 2017 study on cannabis use, students in Manitoba reported the fourth highest (of the provinces) prevalence of cannabis use (Cooke et al, 2020). Further, the Addictions Foundation of Manitoba reported a 47 percent increase in youth use of amphetamine between 2014 and 2017 (Addictions Foundation of Manitoba, 2018). More recently, during a listening tour[5] organized by the Manitoba Advocate for Children and Youth (MACY), from December 2019 to February 2021, 55 percent of youth identified substance addiction and 53 percent of youth identified mental illness as a top issue in their communities (MACY, 2021).

Further, some youth note that they use substances to cope with traumatic experiences while others describe it as an outlet to compensate for having few recreational activities available through their schools or communities (MACY, 2021). Other common reasons for youth substance use include curiosity, peer

[5] MACY carried out an in-person and then virtual Listening Tour with youth across Manitoba from December 2019 to February 2021. The purpose of the tour was to raise awareness of the youth to their rights as contained in the United Nations Convention on the Rights of the Child; while also gathering information about the challenges, strengths, and solutions youth identify in their communities and beyond.

pressure, enhancement of social interaction, and to cope with or suppress negative emotions (MACY, 2021).

1.5. Demographic largely affected by substance use disorder in Manitoba.

The ongoing impacts of colonization continue to have long-term intergenerational effects on the mental, emotional, physical, and spiritual health and overall well-being of Indigenous people in Canada. It has resulted in the breakdown of families, and communities; loss of language, culture, and traditions; exposure to abuse; intergenerational transmission of trauma; and marginalization. All of these have been suggested to be associated with the poor mental health and substance addiction (Kumar & Tjepkema, 2019). Unfortunately, these issues have placed the burden of substance addiction and co-occurring mental health disorders more on Indigenous communities than non-Indigenous communities (Wilk et al., 2017; Allan & Smylie, 2015; Government of Canada, 2002).

Furthermore, survivors of the Canadian residential school system are known to have poorer physical, mental, and emotional health, including higher rates of depression, mental distress, substance use disorder, stress, and suicidal behaviors than any other group in Canada (Wilk et al., 2017; Hackett et al., 2016). A study in British Columbia examined the mental health profiles of 127 survivors of the residential school system and found that only two survivors were not diagnosed with a mental disorder (Corrado & Cohen, 2003). Substance use disorder was one of the most prevalent disorders identified, along with post-traumatic stress disorder and depression (Corrado & Cohen, 2003).

Consequently, the prevalence of substance use disorders is higher among Indigenous adolescents (7.6 percent) than other non-Indigenous youth in Manitoba (Chartier et al, 2020). A study conducted on youth in Grades 5 through 12 compared the prevalence of alcohol abuse and marijuana use among Indigenous youth living on reserve with non-Indigenous youth (Lemstra et al., 2013). It found that 61 percent of on-reserve Indigenous youth compared with 54 percent of non-Indigenous youth reported the use of alcohol (Lemstra et al., 2013).

Most tragically, substance use is often associated with a higher risk of death by suicide (Orpana et al., 2020; Borges & Loera, 2010). As a result of emotional suffering associated with substance addiction and co-occurring mental illness, suicide remains a leading cause of death for children and youth in Manitoba. In 2015, the office of the Manitoba Advocate for Children and Youth reviewed 61 suicide deaths of youth between 2009 and 2012. It reported that at the time of autopsy, majority of youth had a blood alcohol level between 0.16 percent - 0.19 percent (MACY,2015). This means these youth may have experienced a state of system depression, nausea, disorientation, blurred vision, and impaired judgement

at their time of death (Pedersen et al, 2013). Further, twenty-one (21) had drugs typically of the benzodiazepine classification (i.e., Xanax, Valium) present in their system at the time of autopsy. Eight (8) had both alcohol and drugs in their system (MACY, 2015).

The following chapter presents the *Youth Drug Stabilization (Support for Parents) Act* and analyses its current provisions to protect youth with severe substance use disorders.

Chapter 2: Legislation Protecting Youth with Substance use Disorders in Manitoba.

2.1. *The Youth Drug Stabilization (Support for Parents) Act*

The *Youth Drug Stabilization (Support for Parents) Act* came into force in November 2006. It provides for involuntary intervention for youth in Manitoba under 18 years of age who are causing themselves serious self-harm through severe, persistent substance abuse. It provides a short-term stabilization during which youth can detoxify within a controlled and safe environment, as well as recover from the often-overwhelming dynamics that arise from substance use disorders (*Youth Drug Stabilization (Support for Parents) Act*, S.M. 2006).

The basic criteria outlined in the legislation include that:

- a parent or guardian seeking an apprehension order must produce evidence to a justice of the peace, that a youth:
    - is abusing one or more drugs severely and persistently.
    - is likely to deteriorate substantially either physically or psychologically because of severe and persistent drug/and or alcohol abuse.
    - should be assessed by an addictions specialist to determine whether they should be detained at a secure facility to be stabilized.
    - and has consistently refused to agree to a voluntary assessment or has had one or more unsuccessful interventions to address his or her alcohol and /or drug abuse.
- If there is evidence that the youth meet the criteria, a justice of the peace may issue an apprehension order that authorizes the police to search for, apprehend and transport the youth to a stabilization facility to be assessed by two addictions specialists.
- Following assessment, the addictions specialists will decide whether to issue a stabilization order. If the justice of the peace is satisfied that the basic criteria in the legislation have been met, he or she may grant an apprehension order.

- Additional information will be provided about the youth to help stabilization facility staff care for them and develop a treatment plan.
- The apprehension order is then given to the police who will apprehend the youth and take him or her to a designated stabilization facility where they will remain for 7 days.

Following stabilization, the treatment plan developed for the youth may be pursued voluntarily upon discharge (*Youth Drug Stabilization (Support for Parents) Act*, S.M. 2006).

2.2. Analysis of the provisions of the *Youth Drug Stabilization (Support for Parents) Act*

The involuntary confinement of youth for the purpose of stabilization comes with overriding autonomy which may result in substantial harms and human rights violations and must not be taken with levity (Hanon, 2016). Accordingly, the YDSA contains procedural protections to prevent unjustifiable deprivation or violation of the rights of youths. This is in line with the Section 1 of the *Canadian Charter of Rights and Freedoms*. It is also in line with several provisions of the United Nations Conventions on the Rights of the Child, including:

- Article 3 (1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- Article 3 (2): State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, considering the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- Article 18(2): To guarantee and promote the rights set forth in the present Convention, State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children.
- Article 24(1): State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- Article 25: State Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health,

to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

- Article 33: State Parties shall take all appropriate measures, including legislative, administrative, social, and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

The importance of individual rights and autonomy in making medical decisions can be seen in the exemplary case of *Ciarlariello v Schacter* (1993). The Supreme Court of Canada expressly acknowledged the legal view of autonomy in Canadian medical law in the following statement:

> …everyone has the right to decide what is to be done to one's own body. This includes the right to be free from medical treatment to which the individual does not consent. This concept of individual autonomy is fundamental to the common law... [6]

However, it is important to note that youth with severe substance use disorders represent a vulnerable group in society who may lack the capacity to make autonomous decisions. If they choose not to seek treatment voluntarily, they will often be subjected to significant harm and even death. In her comments on the challenges of involuntary treatment, Chief Justice McLachlin of the Supreme Court of Canada, succinctly summarized the argument that:

> *…Failure to treat may well result in permanent impairment of their right to be free from physical detention and their right to have a mind free from debilitating delusions, terrifying hallucinations, and irrational thoughts. .... abandoning such people to the torments of their illness, mental and physical deterioration, substance abuse and perhaps suicide surely does not respect their inherent dignity as human beings* …. (McLachlin, 2010).

Thus, insofar as the youth's choice not to receive treatment are not autonomous, it is important that the YDSA provides for involuntary treatment care to restore the youth to a higher level of health which is beneficial for the enjoyment of individual rights, liberty, and autonomy of youth and in their overall best interest.

[6] See Ciarlariello et al. v. Schacter et al., (1993) 151 N.R. 133 (SCC)

Chapter 3: The Voluntary Treatment versus Involuntary Treatment Debate

3.1. Ethical Underpinning of the Debate

In response to the substantial harms that arise from substance use, many countries provide forms of involuntary treatment for substance abuse (Pasareanu et al., 2019; Isrealsson & Gerdner, 2010). The use of involuntary treatment care arises from the obligation to protect an otherwise legally capable individual in a self-destructive and vulnerable condition due to substance use (Pasareanu et al., 2019; Marlowe, 2001). More importantly, in many instances, the involuntary treatment option is often implemented only after voluntary treatment interventions have been tried and proved to be unsuccessful (Manitoba laws, 2023; Pasareanu et al., 2016; Isrealsson & Gerdner, 2010). This chapter discusses some ethical issues surrounding the voluntary versus involuntary treatment debate as it pertains to the protection of the youth. While this paper acknowledges the various facets of ethics, it will focus broadly on society. This includes family, various communal groups and systems that create, implement and monitor, legislations that protect youth.

3.2. The Libertarian Perspective

Involuntary treatment remains a matter of ongoing debate which raises several issues and ethical concerns (Sjöstrand et al., 2015). A fundamental critique of involuntary treatment is that it involves limitations on liberty and autonomy which is in violation of some basic principles of international law as stipulated in article 9 of the Universal Declaration of Human Rights which states that, 'No one shall be subjected to arbitrary arrest, detention or exile';[7] and other international treaties, including Article 9 of the International Covenant on Civil and Political Rights,[8] Articles 37 and 40 of the Convention on the Rights of the Child[9] and Article 14 of the Convention on the Rights of Persons with Disabilities.[10] It is also enshrined in section 7 of the Canadian Charter of Rights and Freedoms which ensures the rights to life, liberty, and security of every person.[11]

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[7] United Nations Universal Declaration of Human Rights, 1948.//www.un.org/en/about-us/universal-declaration-of-human-rights

[8] United Nations International Covenant on Civil and Political Rights, March 23, 1976. https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[9] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. https://www.refworld.org/docid/3ae6b38f0.html

[10] UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106. Available at: https://www.refworld.org/docid/45f973632.htm

[11] Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the* Constitution Act, 1982*.* Retrieved November 1, 2022, https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/pdf/charter-poster.pdf

This argument is in line with libertarianism. The libertarian perspective of autonomy is rooted in the works of German philosopher Immanuel Kant. According to Kant, to be autonomous is to govern oneself with the principles that most express our nature as free and rational beings (Rawls, 1999). Thus, libertarianism is a socio-philosophical position that asserts the primacy of individual autonomy over the collective (Rorbets & Riech, 2002). It argues that human beings have the universal capacity to develop and implement decisions pertaining to their lives, and that the state is obligated to honor these decisions to protect individual rights (Roberts & Riech, 2002; Schmidt, 1999).

Further, libertarians believe that only negative rights (those which guarantee personal freedom) must be protected by the state. They are typically opposed to restrictions on issues such as substance use and abortion, since restricting these actions limit autonomy and individuality (Roberts & Riech, 2002). Thus, in a libertarian's view, if a youth with severe substance use disorder chooses not to seek treatment, the rights of such a youth should not be infringed upon in the name of treatment. They must be allowed to either voluntarily decide to seek and receive treatment or decide to receive no treatment at all, so long as they do not pose harm to others (Lin, 2003).

However, substance use disorder suspends or even destroys the free will of an individual (Takahashi, 2009). As a result, studies have shown that individuals with severe substance use disorders often lack the ability to follow through on decisions to reduce or abstain from substance use because of the neurobiological effects of addiction (Clarke et al., 2016; Volkow, Koob & McLellan, 2016). This is particularly true for youth with severe substance use disorders, which affects brain development and results in behavioral and cognitive dysfunction and impaired decision making (Jahan & Burgess, 2022; Copeland et al, 2015; Monasterio, 2014; Whitford et al., 2013). This lack of autonomy means that these individuals are not exercising their free will as libertarians like to think. Thus, psychiatrists and other mental health professionals argue that a consequence of rejecting of involuntary treatment means individuals in mental distress will die with their rights intact (Maylea, 2017; Treffert, 1973; d'Abrera 2015). This also holds true when youth with severe substance use disorders refuse voluntary treatment. Although their rights remain intact, continued exposure to substantial harms leads to a shorter and less healthy life, and in some tragic cases even death.

3.3. The Communitarian Perspective

The simplistic interpretation of rights and the focus on individual autonomy in the libertarian perspective ignores the social structure and important community values of human life which foster virtue

and community (Roberts and Reich, 2002; Sandel, 1982). As posited by Charles Taylor and Michael Sandel (1982), human beings do not exist as abstract categories. Rather, human beings belong to communities. Communities here refer to ethnic, racial, religious background or shared sexual orientations (Etzioni, 2011). Hence, all human beings are simultaneously daughters, sons, members of families, clans, tribes or nations, and residents of cities, towns and villages. Further by virtue of being born, living, or belonging to a community, specific ties become created with values and normative obligations that regulate community members' existence (Simmons, 2019; MacIntyre, 2007).

Further, the communitarian perspective recognizes that communities have obligations which include the duty to be responsive to their members and to foster participation and deliberation in social and political life (Simmons, 2019). Thus, in contrast to libertarianism which emphasizes the centrality of the individual, communitarianism is a socio-political philosophy that prioritizes the common good over the individual rights, known as *in dubio pro communitate* (Zeidler & Łągiewska, 2021). The common good here refers to those goods that serve the shared interests of a given community (Etzioni, 2013). Accordingly, Hampton (1998) argues that while libertarianism encourages an individual's autonomy to seek their own 'good' within a political structure that defines and enforces what is 'right'; communitarians believe that political structure plays a significant role in defining both what is right and what is good, and in helping individuals achieve the common good. It is therefore the duty of the state to ensure the protection of values that contribute to the respect of both identity and integrity of the community for the common good (Radkiewicz, & Jarmakowski-Kostrzanowski, 2021; Zeidler & Łągiewska, 2021).

There are various types of communitarianism. Among them are authoritative and responsive communitarianism. The authoritative communitarianism prioritizes community over individual rights (Etzioni, 2013; Etzioni 2011). Responsive communitarianism is described further below.

3.4. Responsive Communitarianism

Responsive communitarians posit that the autonomy of individual rights and the common good are neither mutually exclusive nor should one be prioritized over the other (Etzioni, 2013; Etzioni, 2011; Yong Huang, 1998). It draws attention to the social side of human nature often ignored in policy making. These include the responsibilities that must be borne by citizens, individually and collectively, in a regime of rights; the fragile ecology of families and their supporting communities; and most importantly, the ripple effects and long-term consequences of present decisions (Simmons, 2019).

To the greatest extent possible, responsive communitarianism relies on society (informal social controls, persuasion, and education) to minimize the role of the state (law enforcement) in promoting compliance with the norms that flow from these values (Etzioni, 2013). It holds that the more a society relies on norms rather than laws, and on public education, moral persuasion, and informal social controls, rather than on law enforcement, the better the society (Etzioni, 2011). For example, responsive communitarians proposed that before implementing mandatory HIV testing and the involuntary isolation of people who have contracted HIV, it is important to engage in public educational campaigns and work with communities at risk to encourage their members to be tested (Etzioni, 2011).

Conversely, responsive communitarianism also recognizes that certain conditions require state intervention, although it is best used as the last resort. For instance, when people infected with a highly communicable disease that has fatal consequences do not heed calls to remain at home until they cease to be infectious, the state has an obligation to enforce their quarantine (Etzioni, 2011).

3.5. Establishing a middle ground for the Voluntary versus Involuntary treatment debate.

The main objective of responsive communitarianism is to ensure a balance between individual autonomy and concern for the common good, without making either value subordinate to the other (Etzioni, 2010). The fundamental purpose of adopting a responsive communitarian framework in the voluntary versus involuntary treatment debate, therefore, would be to ensure that people experiencing severe substance use disorders receive the necessary treatment they require without compromising their individual autonomy and rights. More importantly, the responsive communitarian framework acknowledges the inevitable tension that may arise between balancing individual autonomy against the common good. It therefore offers guidance through a set of balancing criteria which must be jointly to ensure the competence to cope with such conflicts. These include the following:

1. Societies should not build coercive measures without clear or immediate danger or challenges. Changes in governing public policies and norms must only be introduced if the challenges to society are severe enough to justify such changes (Simmons, 2019; Etzioni, 2013).
2. Societies should respond to clear and present dangers without resorting to autonomy restricting measures. Limitations on rights can be considered only if there are significant benefits to the common good. The goal here is to determine the relative costs to one core element of a good society, imposed by enhancing the other (Simmons, 2019; Etzioni, 2013).

3. Stronger mechanisms of accountability and oversight must be introduced to mitigate the adverse effects that may arise from policy changes, particularly for those that limit certain rights (Etzioni, 2013). There is a great possibility that formulated policies or interventions may have adverse side effects. The extent to which these adverse effects can be ameliorated, will impact the success or failure of the said policies.

Within the context of the voluntary versus involuntary treatment debate, the balancing criteria of the responsive communitarian framework provides accountability, non-discrimination and equality, participation, as well as the balance of best interests of both the individual and the community. It should be noted that in cases where a criterion, cannot be justified this does not mean that a policy must be abandoned but only that it should be greatly refocused to ensure the outcome balances the limitation for the best possible outcome.

Chapter 4:

4.1. Rethinking the *Youth Drug Stabilization Act*: A Responsive Communitarian Approach

The high prevalence of functional or decision-making incompetence caused by severe substance use disorder justifies the need for involuntary treatment care. Thus, insofar as the youth's choices not to receive treatment are not autonomous, it is important that the YDSA provides for involuntary treatment care to restore the youth to a higher level of health which is beneficial for the enjoyment of individual rights, liberty, and autonomy of youth and in their overall best interest.

The following section of the research paper will apply the balancing criteria of the responsive communitarian framework to the *Youth Drug Stabilization (Support for Parents) Act*. The purpose of this is to supplement the theoretical description of the responsive communitarian framework in this context and provide some guidance for rethinking protections for youth with severe substance use disorders.

- Criterion 1: *Short-term stabilization is insufficient to regain autonomous capacity to seek further treatment for some youth with severe substance use disorders.*

Manitoba is one of the few provinces along with Alberta and Saskatchewan, with legislation outside child protection acts, which allows for involuntary confinement of youth for the purpose of stabilization and detoxication. While Alberta and Saskatchewan permit protection orders for a maximum of 15 days, the YDSA in Manitoba allows for only a seven-day stabilization period. Unlike the other provinces, the YDSA does not allow for renewal of protection orders.

The adverse effects of short-term stabilization and rapid detoxification for youth with severe substance youth disorders provide important basis to rethink the YDSA to prevent more harm to already vulnerable youth. First, studies show that rapid detoxification lowers opioid tolerance and increases the risk of accidental overdose (Pilarinos et al., 2018). The detoxification period is also accompanied by challenging and significant symptoms, such as violence, hostility, self-mutilation, suicidal ideation etc. which can present substantial harm to the youth as well as people around them (Illicit drug task force, 2019). Given these risks, in a 2017 inquiry into the death of a 17-year-old in Alberta who died of methamphetamine and amphetamine toxicity, the program director for the TRACC Hull Services[12] justified longer treatment care for youth with severe substance use disorders on the following basis:

- It is impossible to break substance craving and interrupt destructive dopamine cycles within 30 days.
- New, powerful street drugs and opioids such as fentanyl are more powerfully addictive and dangerous than ever before.
- Prescription medications can be a very useful tool in, in combination with other therapies, to combat addiction and mental illness co-occurrences. Several medications which target these disorders only begin to be effective for their purpose after 30 days; and some may even require even longer to achieve maximum effect.
- New habits and effective coping strategies take time to adopt.

Further there is a huge impact of substance use disorders on families, and communities, in terms of financial and emotional burdens associated with it (Das et al., 2016; Sussman, 2009). In Canada, the annual cost of substance use is estimated at approximately $40 billion. This includes costs related to healthcare, criminal justice, and lost productivity (Centre for Addiction and Mental Health, 2023). Alcohol and tobacco are responsible for more than two thirds of these costs ($14.6 billion and $12 billion, respectively). The next highest cost substances are opioids ($3.5 billion) and cannabis ($2.8 billion) (Centre for Addiction and Mental Health, 2023). However, studies show that every dollar spent on the treatment of substance use saves four dollars of healthcare and seven dollars of law enforcement and other criminal justice costs (Families for Addiction Recovery, 2021). Similarly, according to the U.S. Department of Health and Human Services, confirmed scientific evidence shows that treatment for

[12] Transitioning Residential Adolescents and Children into the Community) Program of William Roper Hull Homes. See https://hullservices.ca/services/track/

substance use disorders are cost-effective compared with receiving no treatment (U.S. Department of Health and Human Services, 2016).

- Criterion 2: *Balancing youth autonomy and the common good*

It is important to note that substance use disorders are experienced differently in youth. As mentioned, the inherent risk of substance use disorders in youth lies in its effect on brain development causing behavioral and cognitive disfunction. These effects form harmful contributing factors to academic difficulty (Duncan et al, 2021); problems establishing and maintaining social relationships (Whitley et al, 2018; Vaillancourt & Boylan, 2015); morbidity and mortality (Walker et al; 2015); as well as to overall brain development and mental health related burdens in youth (Jahan & Burgess, 2022; Copeland et al, 2015; Monasterio, 2014). Therefore, if youth with severe substance use disorders are to be become participating and valuable members of society, their unique vulnerability and specific needs must be given primary importance and addressed separately from that of the general population.

On such normative matters, Etzioni (2011) proposes moral dialogues to balance individual autonomy and the common good. Moral dialogues occur when a group of people engage in a process of sorting the values that will guide their formulations of the common good (Etzioni, 2011). They combine passion with normative arguments and rely on processes of persuasion, education, and leadership to transform social values, institutional norms, and cultures (Etzioni, 2011). Such dialogues have resulted in the formation of a new sense of duty to protect the environment, to reject racism and sexism, to oppose the war in Vietnam and many other such society-wide shared understandings (Etzioni, 2011).

Moral dialogues provide an entry point into the slippery slope arguments that arise from the use of involuntary treatment and limitations on youth autonomy for the common good. Most importantly they can also serve as a pillar for sustaining youth rights by ensuring measures to mitigate the slippery slope. Including that assessment on a case-by-case basis which considers the number of times a youth has been admitted for stabilization. It also serves guide to provide the youth's perspective on how they can be helped to ensure that the benefits of involuntary treatment outweigh the risks (Clarke et al, 2019).

- Criterion 3: *Measures to mitigate the discriminatory effects of involuntary treatment care on youth.*

Critics of involuntary treatment care suggest that it is the first step down a slippery slope which will end in widespread implementation of other objectionable practices of coercion. These concerns stem from the beliefs that coercion interferes with the autonomy of the individual to maintain a therapeutic relationship which would enable them to benefit from treatment and

motivate them into recovery (Opsal, 2019; Pasareanu et al., 2016). A fundamental consideration here would be that due to the overrepresentation of indigenous youth with substance use disorders, the use of involuntary treatment care raises additional concern. This is because as aforementioned, within many provincial justice and welfare systems including Manitoba, the ongoing legacies of colonization and residential schools have resulted in an overrepresentation of indigenous youth within the justice and welfare system. Indigenous youth also suffer substance use disorders at a higher rate than other Canadians (Chartier et al., 2020). This suggests that indigenous youth may be particularly vulnerable to involuntary treatment care measures (Pilarinos et al, 2018).

One way to mitigate such discriminatory practices would be to ensure that involuntary treatment and care is nondiscriminatory, fair and does not cause more harm than it seeks to prevent. Since many cases of severe substance use disorders in indigenous youth may also be linked to social determinants of health that have been inadequately addressed through current systems such as trauma, poverty, and racism), a starting point would be to adequately address the root causes of substance use (Clarke et al., 2018). These include racism, poverty, homelessness, and intergenerational trauma.

Morgan and Felton (2013) interestingly observe that some of the essential components of recovery such as collaboration, recognition of autonomy and individual choice, and support are usually not considered during involuntary treatment. In addition, Minkowitz (2010) recommends spiritual and cultural approaches as well as collaborative healing methods which rely on relational engagement rather than coercion. Therefore, another fundamental measure would be to consider harm reduction models in involuntary treatment care. This could include designing involuntary treatment centers in ways that less are rigid and more sensitive to provide trauma informed and culturally sensitive care for particularly for Indigenous youth. These could be safe and secure, home-like settings, which include clinicians and cultural workers who can attend to the physical, emotional, and spiritual needs of the youth who are quite literally dying from their trauma- induced addictions (MACY, 2019).

4.2. Conclusion

The responsive communitarian framework provides a balanced way to reconcile the concerns of the libertarian voluntary treatment and the communitarian involuntary treatment debate and to establish a middle ground that ensures balance between both perspectives. It allows

for collaboration with community stakeholders including families, care givers, traditional healers, cultural leaders, and healthcare providers to develop interventions that best suit the community without overriding individual autonomy. This is a vital provision of this framework because it is within this task of communal collaboration that healing and hope for youth with severe substance use disorders is renewed, for the beginning of healing (Abbott & Duane, 2008).

Chapter 5: The Way Forward

5.1. Recommendations

Intentional and accidental mortalities associated with substance use disorders represent a serious challenge and a cause of preventable death in youth (Belcher & Shinitzky, 1998). Considering compulsory pathways to treatment for youth with severe substance use disorder in Manitoba and in general must not be considered taboo. As noted by Honorable Judge John Guy:

> *…It should be clear to all of society, children in these age categories neither have the judgment nor maturity to live a secure life. Both our common sense when we raise our own children and the laws of our country with respect to both child welfare laws and laws under the Criminal Code, dictate youth of this age are not capable of exercising good judgment nor possess sufficient knowledge to do so. That is why all manner of laws allow parents to guide, inform and educate their children until they can make those decisions of safety and health, etc. on their own. Isn't that what raising a child is all about – educating, advising, preparing them to make the best decision. When this process breaks down, for whatever reason, society needs to step in to protect this most valuable resource – our children. These statements may sound platitudinous to some, trite to others, but are they nevertheless true? Our laws, supported by our moral and ethical standards, certainly mirror these precepts – protection of our young…* (Provincial Court of Manitoba, 2008).

The best Interests of youth is a substantive right and a principle that guides the United Nations Covenant on the Rights of the Child. It is aimed at the holistic development of the youth and requires policies that promotes their dignity. The *Youth Drug Stabilization (Support for Parents Act)* must therefore consider the best interests of the youth at the concrete level of the consequences that are likely to occur from voluntary treatment or involuntary. This will include adequate consideration of the youth's history (context, family support, substance use etc.), nature of substance use, effects of treatment and

consequences of no treatment. It is only by considering their best interests that informed decisions about involuntary treatment can be decided.

In line with this, this paper makes the following recommendations:

- The *Youth Drug Stabilization (Support for Parents) Act* must be amended to include an additional eight days for stabilization, making a total of 15 days for initial stabilization of youth with severe substance use disorders. This will bring Manitoba in line with other provinces with similar legislations including Alberta and Saskatchewan youth with severe substance addiction.
- After the initial 15-day cycle of stabilization, youth must be assessed to ensure their ability to express treatment decisions. The tests must include not only evidence of the youth's expression of choice, but also that the youth's reasoning process is rational and autonomous. If the assessment finds that the youth lack the capacity to make autonomous decisions, involuntary treatment must be initiated for at least 15 days to ensure adequate medical treatment.
- The *Youth Drug Stabilization (Support for Parents) Act* must be amended to ensure that parents and care givers of youth with severe substance use disorders can request involuntary treatment care on behalf of a youth that has attended a stabilization center on three occasions without further treatment within a period of 60 days. In this case, involuntary treatment must be initiated for at least 15 days to ensure adequate medical treatment to prevent cyclical stabilization.

5.2. Conclusion

This paper has argued that a responsive communitarian approach can provide a principled balance between liberal perspective's somewhat reluctance to interfere with the autonomy of youth with severe substance use disorders, and the communitarian perspective which considers the community interests over the youth. Responsive communitarianism provides a valuable ethical and theoretical framework that will allow youth with severe substance use addictions receive much needed care in their best interests. More importantly the balancing criteria allows involuntary treatment to be provide with safeguards to mitigate the slippery slope effects.

Substance use disorders if left untreated have long lasting consequences that affect youth not only in the present but also in adulthood. Involuntary treatment must therefore be considered as part of the measures to mitigate against the consequences of substance use disorders in youth. The recommendations

for consideration therefore place the best interest of youth at the center of the policy change to ensure that youth receive the necessary medical care to regain autonomy needed for the enjoyment of their rights.

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