Models of problem solving civil jurisdictions: a few reflections on two systems for civil commitment

[and cathedral architecture]

Assoc Prof Sandy Simpson,
Clinical Director, LAMHP, CAMH
Head, LAMHP, University of Toronto
Sandy_Simpson@camh.net

Psychiatry
UNIVERSITY OF TORONTO

September 26, 2011
CIJA Conference
Toronto

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

Outline

I will not address:

- Why Canadian mental health law has developed as it has?
- How lawyers should operate? [not for me to say]

What I will try and address:

- Examine 2 jurisdictions I either know a lot about [NZ] or a little about [Ontario] in relation to one aspect of civil commitment: involuntary hospitalization [if time permits, one other approach]
- By contrasting these consider what is necessary for mechanisms in mental health law to function well.
- Importance of systems of accountability or standard setting that work on multiple levels
- Litigation as one, but only one approach

2

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

- And the best metaphor to think about all of this is…..

The Gothic Flying Buttress

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

Reflection

What does it take to ensure law works effectively?

- The players: standards, agreed models of practice, standard setting and policing
- The structure: a range of appeals and protections, but not too few [breeds injustice] or too many [defeats the purpose of the legislation]
- Mediation as well as litigation

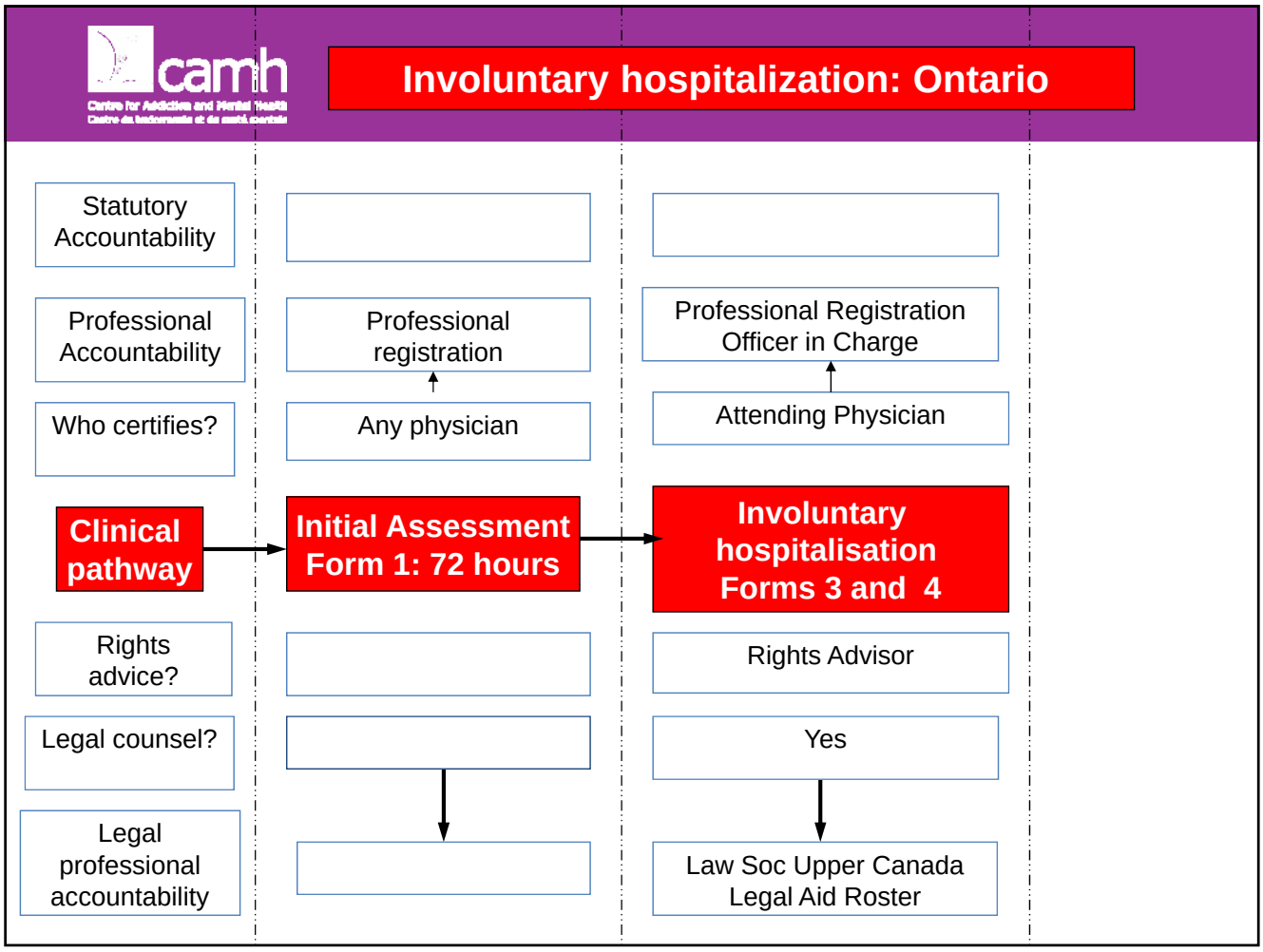
Adaptations to specific types of problems solving?

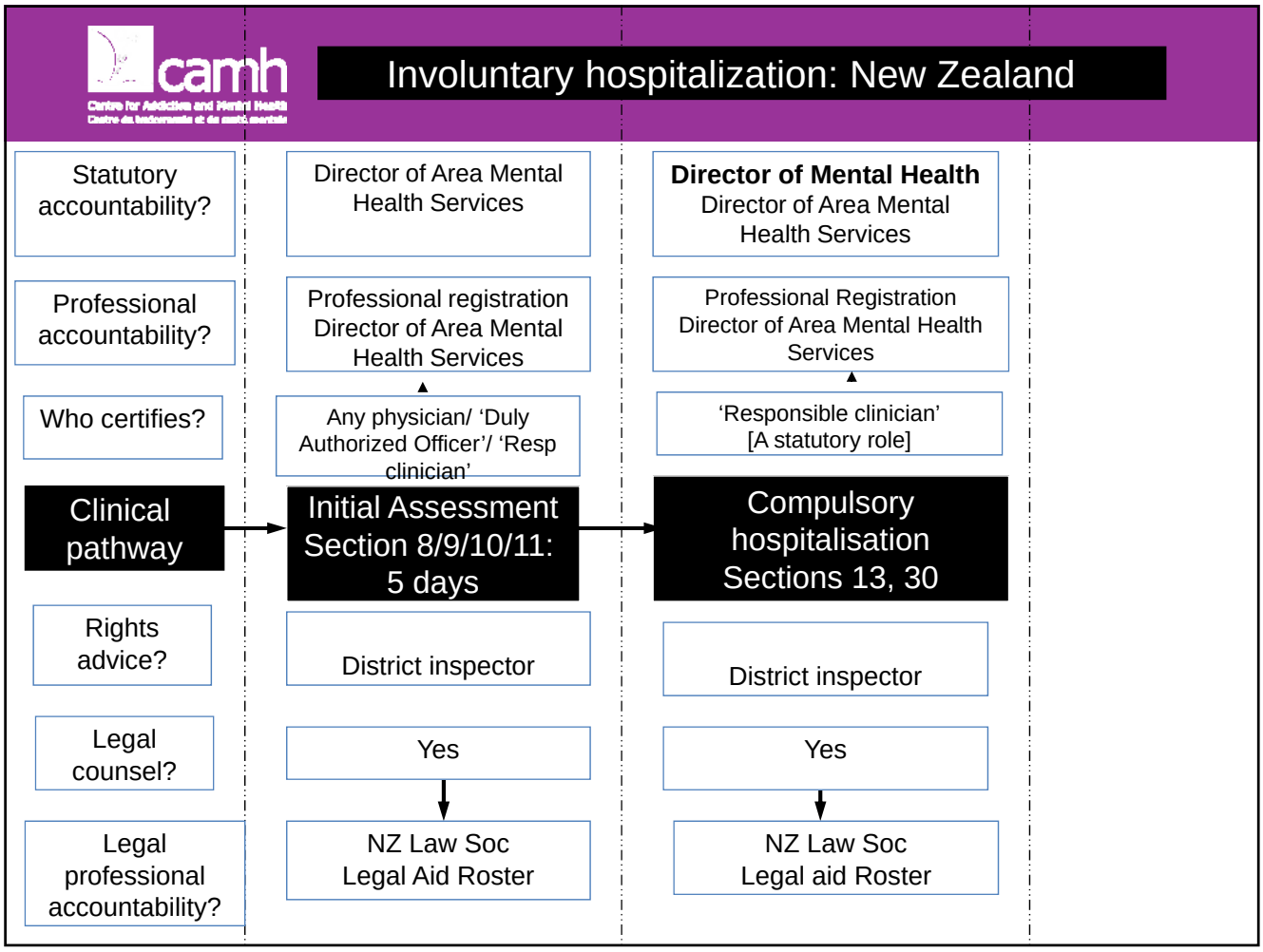
- Does an adversarial or inquisitorial process always work best?
- What happens when one is litigating in:
  - a family [custody, access etc] or
  - a therapeutic relationship [need for treatment, risk to self or others]?
- What needs to occur fore 'best outcomes'?

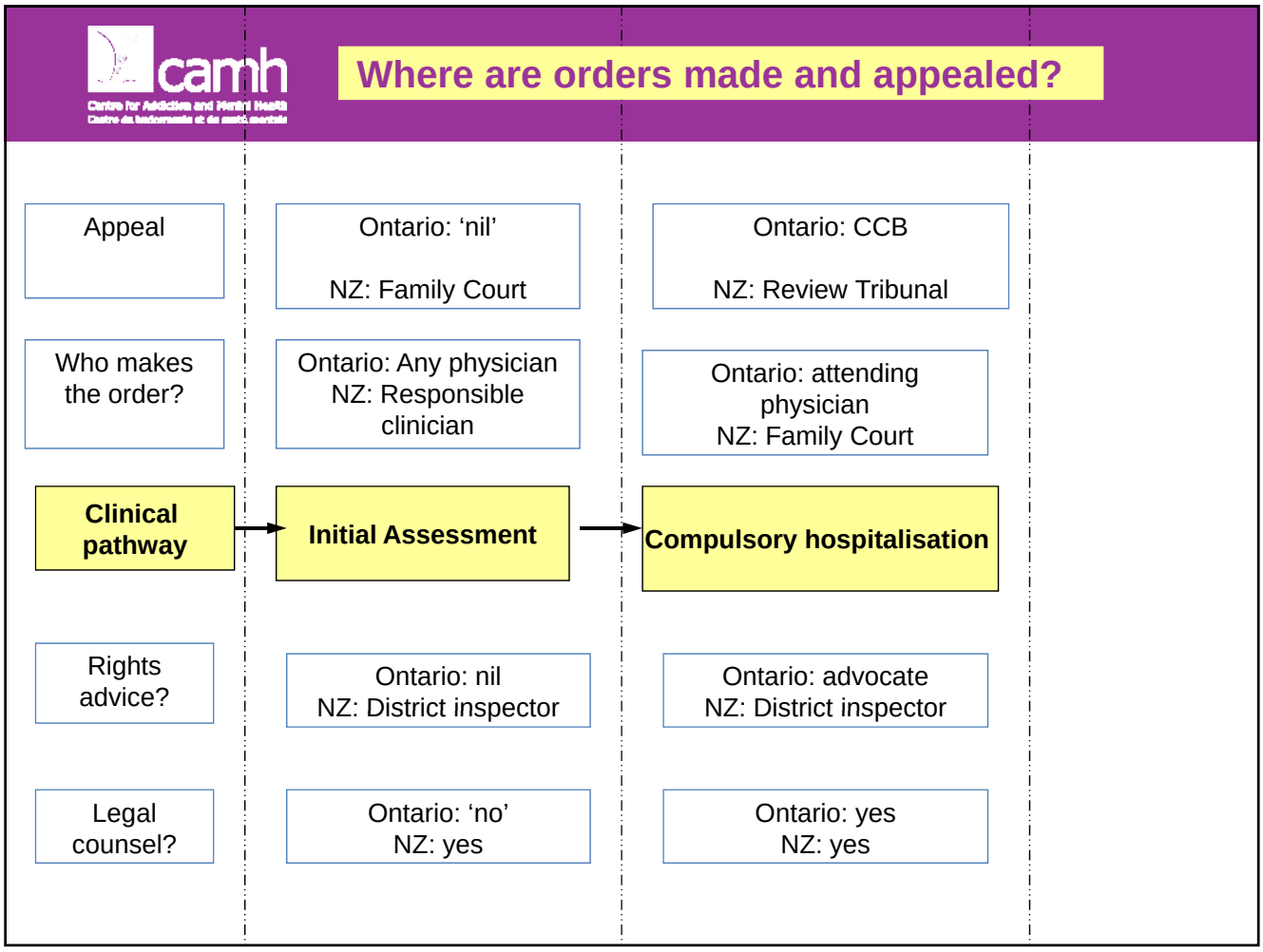
5

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

- So, a case example of involuntary hospitalization in 2 jurisdictions…
- Simplified to illustrate the point


camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale
Involuntary hospitalization: Ontario
Statutory Accountability
Professional Accountability
Who certifies?
Professional registration
Any physician
Professional Registration Officer in Charge
Attending Physician
Clinical pathway
Initial Assessment Form 1: 72 hours
Involuntary hospitalisation Forms 3 and 4
Rights advice?
Legal counsel?
Legal professional accountability
Rights Advisor
Yes
Law Soc Upper Canada Legal Aid Roster


camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale
Involuntary hospitalization: New Zealand
Statutory accountability?
Director of Area Mental Health Services
Director of Mental Health
Director of Area Mental Health Services
Professional accountability?
Professional registration
Director of Area Mental Health Services
Professional Registration
Director of Area Mental Health Services
Who certifies?
Any physician/ 'Duly Authorized Officer'/ 'Resp clinician'
'Responsible clinician'
[A statutory role]
Clinical pathway
Initial Assessment
Section 8/9/10/11:
5 days
Compulsory hospitalisation
Sections 13, 30
Rights advice?
District inspector
District inspector
Legal counsel?
Yes
Yes
Legal professional accountability?
NZ Law Soc
Legal Aid Roster
NZ Law Soc
Legal aid Roster


Where are orders made and appealed?
Appeal
Ontario: 'nil'
NZ: Family Court
Ontario: CCB
NZ: Review Tribunal
Who makes the order?
Ontario: Any physician
NZ: Responsible clinician
Ontario: attending physician
NZ: Family Court
Clinical pathway
Initial Assessment
Compulsory hospitalisation
Rights advice?
Ontario: nil
NZ: District inspector
Ontario: advocate
NZ: District inspector
Legal counsel?
Ontario: 'no'
NZ: yes
Ontario: yes
NZ: yes

Ontario

- More authority [and autonomy] of physician
- More authority [and autonomy] of counsel
- Later engagement of expert tribunal, and court [only on appeal]
- Model of representation becomes more adversarial, only when there is dispute

New Zealand

- Stronger statutory and regulatory definition of clinical standards
- Law Society and senior counsel oversight of models of practice
- Model of litigation both inquisitorial and with ‘best outcomes’
- Early and routine access to judicial review
- Shared [clinical and legal] functions in making coercive decisions

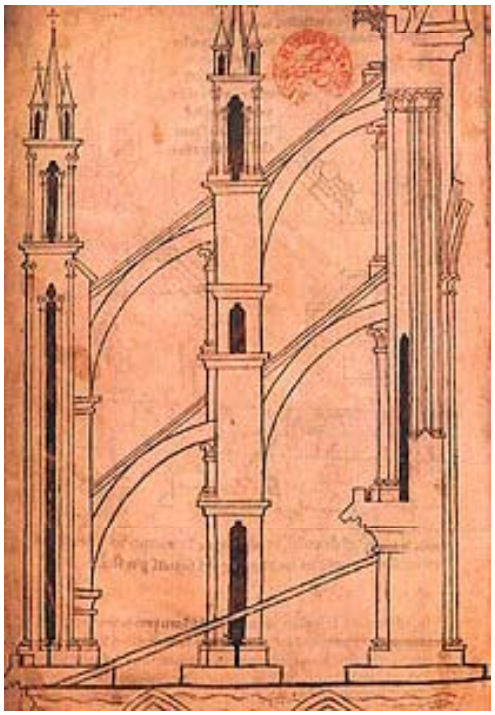
Which is 'better'?

- A value judgment
- Civil commitment [inpatient and community] more commonly used in NZ
- Involuntary hospitalization is for treatment, so the 2 decisions [detention and treatment] are not separated [similar to BC]
- Court appearances routine, not always contentious or negative

The Gothic Flying Buttress

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale



- Sometimes we analyze too narrowly, and look at one piece only:
  - The law
  - The behaviour of other players
  - Available resources
  - Only some rights [rights of refusal verses rights and need for treatment]

  - Sometimes it is best to think about the system, and how adjustments to each piece, can support the function of the whole.

camh
Centre for Addiction and Mental Health
Centre de toxicomanie et de santé mentale

Thank you

Contact: Sandy_Simpson@camh.net