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Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Human rights and mental health research and policy

Consultation paper

January 2011

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1. Introduction

In Ontario, the human rights of people with mental health disabilities and addictions are protected under the ground of “disability” in the Ontario *Human Rights Code (Code)*. People are protected from discrimination and harassment in employment, housing, goods, services and facilities, contracts, and membership in trade, union or occupational associations. This not only includes people who have a disability, but people who are perceived by others to have or have had a disability.

Despite these protections, people with mental health disabilities and addictions continue to face discrimination in employment, housing and services. Discrimination affects dignity, increases social isolation and leaves people unable to fully take part in society. People with mental health disabilities and addictions face prejudice and discrimination in many areas of their lives. Barriers in one area (such as education or employment) can often lead to barriers in other areas (such as housing). The impact may be different or worse for people who already face discrimination because of their race, sex, sexual orientation, citizenship, disability, gender identity, age, ethnic origin, or because they receive social assistance.

Because of these concerns, over the last year, the Ontario Human Rights Commission (OHRC) has consulted with many individuals and organizations to develop a plan to address discrimination based on mental health and addiction. In April 2010, the OHRC released its plan, and began using many of the functions in its mandate to:

- Develop a policy on human rights and mental health
- Conduct public interest research about issues of concern that affect people with mental health issues and addictions
- Get involved in cases at the Human Rights Tribunal of Ontario, by intervening, helping with or filing Commission Initiated Applications in cases involving mental health and addictions that are in the public interest
- Do public education about discrimination based on mental health and addictions
- Report on the state of human rights for people with mental health issues and addictions
- Establish partnerships with other agencies to address discrimination
- Tell the public what the OHRC is doing in this area
(see our [web page on mental health](#) at www.ohrc.on.ca for more details).

We are developing a human rights and mental health policy that will focus on rights and responsibilities under the *Code* related to employment, rental housing and services. We will also be doing more research on discriminatory barriers to employment for people with mental health disabilities and addictions.

To guide us in these steps, we are holding public consultations across Ontario in the winter and spring of 2011. The consultation includes:

- In-depth interviews with key individuals and organizations
- A survey on discrimination faced by people with mental health disabilities and addictions
- Round-table discussions in Toronto, Windsor, Ottawa and North Bay
- Focus groups with people with mental health disabilities or addictions, employers, housing providers, service providers and others
- A call for written submissions.

The OHRC is seeking feedback on a number of human rights issues, and is providing different ways for you to get involved. The goals of the consultation will be to:

- Collect individual stories of discrimination
- Identify key areas and themes of discrimination experienced by people with mental health and addiction disabilities on an individual and systemic level
- Understand the perspectives of people with mental health disabilities, people with addictions, rental housing providers, service providers, employers, advocates and others
- Identify how the OHRC and others can best communicate the rights and responsibilities under the Ontario *Human Rights Code*
- Identify solutions and best practices to prevent and respond to discrimination.

This *Consultation paper* focuses on the major areas we are asking for input on. We will release a report after the consultation to identify the themes and issues that emerge.

2. Raising public awareness and addressing discrimination

From our research so far, we heard that many people don't know they have the right to be free from discrimination in rental housing, employment and services because of a mental health disability or addiction. Many don't know how to ask for help or how they can enforce their rights.

Also, employers, rental housing providers and service providers may not know they have to protect the human rights of people with mental health disabilities and addictions under the law. They may also find it hard to address the needs of people with mental health disabilities and addictions who, because of their disability, may have trouble asking for accommodation.

What can the OHRC do to raise public awareness about human rights issues in rental housing, employment and services for people with mental health and addiction disabilities?

3. Discrimination and employment

People with mental health disabilities or addictions often face barriers to finding and keeping jobs. People with serious mental health disabilities tend to have very high rates of unemployment. The Senate of Canada report on mental health states that surveys have found that one-third to one-half of people with mental illness report being turned down for a job for which they were qualified after they disclosed their disability, were dismissed from their jobs, and/or were forced to resign as a result of their mental illness.¹ People may experience harassment on the job from their co-workers and employers because of their disability.

People with mental health disabilities and addictions may face various barriers to employment, such as gaps in work history, limited employment experience, lack of confidence, workplace discrimination and inflexibility, and negative stereotypes. They may find that social assistance rules make it difficult to move to paid employment. Also, the rigid rules of existing income support/benefit programs may prevent people with mental health disabilities and addictions from getting supports in the workplace.²

Many employers don't know they have a legal duty to accommodate people with disabilities during job interviews and on the job. Employers may make assumptions about an employee's ability to do the essential duties of the job based on their lack of knowledge about mental illness or addictions, or have a fear or mistrust of people with mental health issues or addictions.

Employers may not know how to ask about accommodation or how to accommodate someone who is clearly unwell and unable to voice their needs. Some employers may also need police record checks when hiring for vulnerable sector positions. If not done properly, this too could have a discriminatory impact because of mental health.

One of the goals of this consultation will be to collect information for the OHRC's public interest research about employment. We want to look at the barriers to employment for people with mental health issues and addictions, and at discrimination that occurs on the job.

What are examples of discrimination that exist for people with mental health disabilities and addictions when seeking employment? What are examples of discrimination that exist on the job?

What information do employers need about how to meet their obligations under the Human Rights Code relating to hiring, evaluating, disciplining or terminating the employment and accommodating the needs of employees with mental health disabilities and/or addictions?

What steps can be taken to eliminate discrimination in the workplace? What are examples of best practices and good programs that help remove discriminatory barriers in employment?

Are there laws, rules, regulations or programs that create discriminatory barriers that prevent people with mental health disabilities and/or addictions from being fully able to seek or benefit from employment?

4. Discrimination and services

The *Code* protects people in the social area of goods, services and facilities. Services are broadly defined, but include health care (including mental health care), the criminal justice and the court system (for example police), government services (including social assistance), education, child welfare, insurance, shops and restaurants. Many issues may exist for people with mental health disabilities and addictions when they seek services. For example, people may be denied service based on a mental health disability or addiction, or because they are perceived to have mental health disabilities or addictions. They may be denied equal treatment in services, treated unprofessionally due to their disability, or their disability may not be accommodated to the point of undue hardship.

The *Accessibility for Ontarians with Disabilities Act* (AODA) customer service standard requires that services must be made accessible to people with disabilities.³ This includes people who have mental health disabilities and addictions. However, many service providers may need more information about how they can create an inclusive service for people with mental health and addiction disabilities and how to accommodate their needs. We are looking for information on how all types of organizations and programs can deliver equitable and inclusive services that protect the human rights of people with mental health disabilities and addictions.

Some services or programs are designed to address the specific needs of people with mental health disabilities and addictions, such as special employment programs, court programs, or the mental health system. Some of these services will address situations where people lack legal capacity in a certain area and/or are thought to require certain services under existing mental health legislation (for example, the *Mental Health Act*). We want to learn how discrimination may play out in this service context, and how issues of consent and capacity may intersect with the right to be free from discrimination.

What types of discrimination exist in different types of services, including mental health-specific services?

Are there situations of discrimination that specifically affect people who lack legal capacity in an area and/or receive services while involved with the mental health system?

What information can help service providers design inclusive services and meet their duty to accommodate the needs of people with mental health disabilities and addictions? What information do service providers need in this area that the OHRC could assist with?

5. Discrimination and rental housing

In 2007, the OHRC conducted a consultation on discrimination in rental housing. We heard about the concerns that many people with mental health and addiction issues face in renting and keeping housing. We reported on these concerns in [Right at home: Report on the consultation on human rights and rental housing in Ontario](#), and developed our [Policy on human rights and rental housing](#).

For people with mental health and addiction disabilities, access to affordable housing is a major human rights concern. People may face challenges in the rental housing market due to negative attitudes and stereotypes. In a Canadian survey of people with mental illness, half the respondents said the area of their life most affected by discrimination was housing. They said that their experience as a psychiatric patient meant they were less likely to get an apartment lease.⁴ People with mental health disabilities are overrepresented in Ontario's homeless population and many people are at serious risk of becoming homeless.

People with mental health disabilities and addictions often lack access to adequate, affordable supportive housing. Housing problems may intersect with experiences with poverty and with other *Code* grounds, such as receipt of social assistance, sex, race, age and family status.

There may be a need for private and social housing providers for more information on how the *Code* applies when selecting tenants, during tenancy and during evictions. They may need to know how they can accommodate a person's mental health disability in housing, particularly while balancing this with the needs and rights of other tenants. Housing providers may also need guidance on how to meet their duty to accommodate while respecting a person's privacy rights.

Stereotypes around mental illness have also influenced the phenomenon of "Not in My Back Yard" or NIMBY opposition to affordable and supportive housing. Opposition to affordable housing for people protected by the *Code* has led to municipal by-laws and practices that may bar people with mental disabilities from living in certain neighbourhoods.

What barriers exist for people with mental health issues and addictions when accessing adequate, affordable and suitable housing?

The [Policy on Human Rights and Rental Housing](#) includes information on the right to be free from discrimination and the duty to accommodate. What other information do private and social housing providers need to protect the rights of people with mental health disabilities and addictions in tenant selection, during tenancy, and during evictions?

What are best practices in the duty to accommodate people with mental health disabilities and addictions in rental housing?

6. Other concerns

Intersectionality:

Discrimination issues often arise because of a combination of human rights grounds. The OHRC has identified discrimination based on one or more grounds that intersect to produce unique experiences of discrimination as an important thing to consider in all aspects of our work. For example, a young lone mother who has bipolar disorder, receives social assistance and is looking for rental housing might face discrimination because of her disability, sex, age, family status and receipt of public assistance. If she is from a racialized group, her experience of discrimination may change or be compounded.

What types of discrimination happen because of a mental health disability and/or addiction in combination with other Code ground(s)?

Stereotyping:

Stereotyping is part of the negative stigma of mental illness. The OHRC is concerned about how negative stereotyping can lead to discrimination against people with mental health issues and/or addictions. For example, stereotypes about people with mental health issues as being dangerous or unpredictable can unfairly limit employment and rental housing opportunities. Stereotyping can also occur based on more than one Code ground.

What types of negative attitudes and stereotypes about people with mental health disabilities and addictions lead to unequal treatment in rental housing, employment and services? Are there stereotypes that are unique to people based on mental health and addiction status combined with other Code grounds?

Systemic discrimination – laws, policies and practices:

Often, discrimination against people with mental health disabilities and addictions is systemic and embedded in the laws, policies, rules, regulations or practices of an institution or sector. These rules often look neutral on their face, but result in disadvantage for people with mental health disabilities and addictions. For example, the OHRC has been doing work around police record checks. This work arises from concerns about police giving potential employers or volunteer agencies information about a person's mental health or addiction, such as being taken to hospital under the *Mental Health Act*.

Are there specific laws, policies, procedures or systemic practices related to housing, employment or services that disproportionately disadvantage people with mental health issues or addictions?

General:

Are there any other human rights issues, discriminatory practices or systemic barriers in housing, employment or services you would like to tell the OHRC about?

Do you have any other comments on what the OHRC or other bodies can do to raise public awareness, promote human rights and develop policy positions on human rights, mental health and addictions?

7. How you can get involved

The OHRC welcomes your feedback on the areas of concern we identify in this paper. There are many ways to get involved in the consultation:

1. *Written submissions*

If you want to write a submission to the OHRC, please use the questions above to guide your response and feel free to comment on any of the information provided in this paper. You can mail, fax or e-mail your written comments to us at:

Mail: Ontario Human Rights Commission
Human Rights Mental Health Consultation
Policy, Education, Monitoring and Outreach Branch
180 Dundas Street West, 8th Floor
Toronto, Ontario
M7A 2R9

Fax: 416-314-4533

E-mail: consultations@ohrc.on.ca

Please provide your written comments by April 30, **2011**.

Information provided during the consultation is subject to the requirements of the *Freedom of Information and Protection of Privacy Act*. The information and stories obtained during the consultation may form part of a report that may be made public. Personal information will be used for the purposes of this project only, and will remain confidential.

We will keep your contact information confidential. However, if you wish, you can make an anonymous submission. In that case, please specify that you would like to remain anonymous and we will delete any contact details. This may limit our ability to rely on facts you raise in the document unless they can be independently confirmed. However, we could use the information to do more research on the issues you raise.

If you are writing on behalf of an organization, your submission *must* contain your name, organization, address, phone number and e-mail address. *Anonymous submissions from organizations will not be accepted.*

Please make your comments a maximum of eight (8) pages.

2. Round-table discussions

Roundtable discussions will occur on the following dates:

Toronto: February 3, 2011
Windsor: February 17, 2011
Ottawa: March 2, 2011
North Bay: March 28, 2011

If you want to take part in one of the round-table discussions, please e-mail us at consultations@ohrc.on.ca.

Space is limited, so we are asking for one representative per organization to register.

3. Fill out our survey.

To access the survey on discrimination and mental health, see our website at www.ohrc.on.ca or [click here](#). Two surveys have been created: one for individuals with mental health or addiction issues, and one for advocates. The survey asks questions about discrimination, mental health and addictions. The survey can be completed until February 28, 2011.

8. Do you have questions?

If you have any questions about the consultation process, contact the OHRC by telephone at:

416-314-4526 or
1-800-387-9080

Follow the instructions to speak to staff about public education.

TTY: 416-326-0603 or 1-800-308-5561

Endnotes

¹ *Discrimination Against People with Mental Illness and their Families: Changing Attitudes, Opening Minds*, (A Report of the BC Minister of Health's Advisory Council on Mental Health, April 2002), at 10, as cited in The Standing Senate Committee on Social Affairs, Science and Technology, Mental Health, Mental Illness and Addiction Interim Report, *Mental Health, Mental Illness and Addiction: Overview of Policies and Programs in Canada, Report 1* (Ottawa: The Standing Senate Committee on Social Affairs, Science and Technology, 2004) at 50.

² Canadian Mental Health Association. Found at: www.cmha.ca/bins/content_page.asp?cid=3-109&lang=1 Accessed 05/08/2009. Kerzner critiques the Ontario government's assisted devices program and the *Workplace Safety and Insurance Act* as having different eligibility and funding requirements for physical versus mental disabilities. In Kerzner, L. (2008). *Legal Rights and Benefits for Consumer/Survivors. Honouring the Past, Shaping the Future: 25 Years of Progress in Mental Health Advocacy and Rights Protection*. Ontario: Queen's Printer for Ontario.

³ Designated public sector organizations are already expected to comply with the customer service standard. All businesses with at least one employee will have to comply with the standard by January 1, 2012.

⁴ *Discrimination Against People with Mental Illness and their Families: Changing Attitudes, Opening Minds*, (A Report of the BC Minister of Health's Advisory Council on Mental Health, April 2002), as cited in The Standing Senate Committee on Social Affairs, Science and Technology, Mental Health, Mental Illness and Addiction Interim Report, *Mental Health, Mental Illness and Addiction: Overview of Policies and Programs in Canada, Report 1* (Ottawa: The Standing Senate Committee on Social Affairs, Science and Technology, 2004) at 49.