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Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Human Rights Mental Health Strategy

Public Consultation Paper

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**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

Table of Contents

I. Introduction	3
II. Human Rights Law and Policy	4
III. The OHRC’s current and past work on mental health.....	5
IV. What the OHRC has heard	7
V. Proposed Approaches.....	9
VI. Next Steps	10
Endnotes	12

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

I. Introduction

According to Health Canada, mental illness¹ affects one in five Canadians in their lifetime. Despite the prevalence of mental health disabilities² in the general population, people with mental health disabilities and addictions face multiple discriminatory barriers, both individual and institutional, to full participation in society. These barriers result largely from negative societal attitudes about mental health and psychiatric disabilities. They have contributed to experiences of systemic inequality, including poverty, lack of access to appropriate treatment and support services, and difficulties obtaining employment and housing. Discrimination can compound the effects of living with mental health disabilities by making it harder to seek treatment, exacerbating or triggering mental health disabilities and addictions, and making it more difficult to recover by limiting available supports.

The Ontario Human Rights Commission (OHRC) has serious concerns about the degree to which people with mental health disabilities experience discrimination. In its former complaint processing capacity, the OHRC received complaints each year alleging that people had been discriminated against because of mental health disabilities. The OHRC has also conducted consultations in which it has heard about the need to promote and protect the human rights of people with mental health disabilities, including consultations on disability and the duty to accommodate, discrimination in rental housing, and mental health and police record checks.

Based on these concerns, the OHRC is developing a human rights mental health strategy to guide its activity in addressing systemic areas of discrimination affecting people with mental health disabilities. In September 2009, the OHRC started meeting with individuals and organizations in the field regarding human rights concerns faced by people with mental health disabilities. This second stage of consultation is aimed at soliciting your views to identify key approaches, issues and projects in these areas.

The purpose of this consultation document is to:

- Describe the human rights protections related to mental health disabilities that are available under the *Human Rights Code (Code)*
- Describe the OHRC's current work in this area
- Provide a summary of the key issues that have been raised with the OHRC so far
- Lay out areas of focus the OHRC is considering and solicit feedback

The OHRC's Mandate

Section 29 of the *Code* gives the OHRC a broad mandate for dealing with issues of discrimination. It is the role of the OHRC to promote an understanding of and compliance with the *Code* through several functions:

- developing and conducting programs of public information and education
- undertaking, directing and encouraging research into discriminatory practices

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

- reviewing legislation, programs and policies and making recommendations where these are inconsistent with the *Code*.
- initiating reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict
- promoting, assisting and encouraging public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based on *Code* grounds
- approving policies
- making applications to the Human Rights Tribunal of Ontario
- reporting on the state of human rights in Ontario

The OHRC wants to know how it can best use its mandate to address issues of discrimination against people with mental health disabilities.

II. Human Rights Law and Policy

International, federal and provincial human rights legislation prohibit discrimination against persons with mental health disabilities.³ In Ontario, human rights protections for people with mental health disabilities and addictions are grounded in the Ontario *Human Rights Code*. People with mental health issues are covered under the ground of “disability” in the *Code*. People with mental health disabilities and addictions are protected from discrimination and harassment in the areas of employment, accommodation (housing), goods, services and facilities, contracts, and membership in trade, union or occupational associations. This includes people who have a disability or are believed to have or have had a disability [section 10(3)].

The OHRC’s *Policy and Guidelines on Disability and the Duty to Accommodate (Policy)* sets out guiding principles on disability and the duty to accommodate, which can be applied to employment, services, housing and other social areas. The *Policy* explicitly recognizes the unique challenges faced by people with non-evident disabilities, such as mental health disabilities. It follows the Supreme Court of Canada’s decisions that make it clear that discrimination because of disability may be based on myths, perceptions and stereotypes as well as actual functional limitations.⁴

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

III. The OHRC's current and past work on mental health

The OHRC has addressed the issue of discrimination based on mental health disabilities in its past and current work. The following is a brief summary of the key initiatives that the OHRC has undertaken to date:

Past Caseload

Prior to July 2008,⁵ the OHRC received, mediated and investigated multiple complaints involving mental health disabilities and addictions. An analysis of a sample of 70 cases investigated between 2000 and 2008 revealed that most people alleging discrimination based on a mental health disability complained about actions taken by their employers.

Human rights and mental health case law

The OHRC was a party or intervened in several significant cases heard at the Human Rights Tribunal of Ontario (Tribunal) or in higher courts. Recently, in *ADGA Group Consultants v. Lane*, the Ontario Divisional Court re-affirmed an employer's duty to accommodate an employee with a mental illness.⁶ The Court upheld a Tribunal decision that the complainant was discriminated against based on his bi-polar disorder when his employer failed to accommodate him and terminated his employment.

In *Entrop vs. Imperial Oil Ltd.*,⁷ the Tribunal and the Ontario Court of Appeal confirmed that alcoholism was a disability. In addition, it was confirmed that the company's drug and alcohol testing policy was discriminatory, and that requiring employees to disclose an ongoing or previous substance abuse problem constitutes direct discrimination under the *Code*. A recent Ontario Court of Appeal decision affirms that random testing of employees for drug and alcohol impairment, absent reasonable cause, is a violation of employees' rights to privacy and intrudes on their dignity.⁸

Current active cases

Notable active cases at the Tribunal that involve the OHRC as a party include an application about the restrictive nature of the special diet allowance under the Ontario Disability Support Program, which affects people with mental health disabilities, and one regarding a police service's unequal treatment of someone with a mental illness.

Police Mental Health Record Checks

In 2008, the OHRC initiated a consultation regarding police records of apprehensions of individuals under the *Mental Health Act*. When apprehensions are recorded on police records and provided to employment or volunteer agencies as part of a background check, it can seriously undermine both the privacy and the ability of people with mental health disabilities to access meaningful work opportunities. The OHRC will be continuing its work on this issue by developing a policy on mental health and police record checks.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

Housing

The OHRC has identified the lack of affordable housing for people with mental health issues as a serious concern. In its consultation report, *Right At Home*, the OHRC made recommendations to government and others to increase supportive housing opportunities. The OHRC has also released its housing policy, the *Policy on Human Rights and Rental Housing*, which outlines the steps that housing providers should take to ensure that they do not discriminate against people with mental health disabilities. It contains a section on discriminatory opposition to affordable housing (“Not-in-my-backyard” or “NIMBYism”), which negatively impacts people with mental health disabilities.

The OHRC has been actively working with municipalities and the Ministry of Municipal Affairs and Housing to provide education to challenge NIMBYism. The OHRC has intervened in legal cases that challenge practices or municipal by-laws that have the potential to exclude people with mental health disabilities from living in the neighbourhood of their choice.

Employment

As noted above, the OHRC’s *Policy and Guidelines on Disability and the Duty to Accommodate* outlines the responsibilities of employers to accommodate the needs of people with mental health disabilities and addictions. In addition, the OHRC’s guide for employers, *Human Rights at Work*, provides practical guidance to employers with respect to employees who may have or may develop mental health disabilities or addictions.

Public Education

The OHRC has been actively commenting on human rights concerns as they affect people with mental health issues, particularly in areas that intersect with its current work. Recent concerns were raised, for example, about jury selection and police mental health record checks, and proposals to keep supportive housing for people with mental health disabilities out of particular neighbourhoods. The OHRC has also been involved in raising awareness about human rights in the two provincial mental health consultations conducted by the legislature’s Select Committee on Mental Health and Addictions and the Minister of Health and Long-Term Care’s Advisory Group on Mental Health and Addictions.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

IV. What the OHRC has heard

From the people and organizations it has met with thus far, the OHRC has heard that numerous issues intersect with one another, posing considerable human rights concerns for people with mental health disabilities and addictions. Participants described a “domino effect”, whereby barriers in one area (such as education or employment), lead to barriers in other areas (such as housing). All of these barriers contribute to experiences of poverty. These issues are compounded for individuals who may already experience discrimination because of their race, sex, sexual orientation, citizenship, disability status, gender identity, age, ethnic origin, or because they are receiving social assistance.

Areas of concern identified by participants included the following:

1. Lack of awareness about rights

The OHRC heard that many people are unaware of their right to be free from discrimination in housing, employment, and services based on a mental health disability or addiction. Participants also noted that there is a generalized lack of understanding on the part of employers, service providers, housing providers and the public regarding the duty to accommodate. Many people are also unaware of their rights to consent or refuse treatment when they are institutionalized in a mental health facility.

2. Stigma and discrimination

Participants shared that people are afraid of identifying as having a mental health disability because of the stigma associated with it. Participants identified that the OHRC should focus not only on negative attitudes resulting from stigma, but also on discriminatory acts. Stigma and discrimination were seen as creating profound barriers in many social areas, such as housing, employment and education. The OHRC also heard that anti-stigma campaigns should be done in partnership with or by people with mental health disabilities.

3. Lack of access to appropriate health care

The OHRC heard that the lack of adequate mental health care services across Ontario is a major concern. Participants also noted that people with mental health disabilities are refused service by GPs and psychiatrists at a high rate. In addition to lack of health care services generally, participants talked about homophobia and racism that exist in general health care and mental health institutions and the lack of “culturally competent” care. The OHRC also heard that children and youth are not being diagnosed or treated early enough and lack timely access to appropriate services.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

4. Income support

As noted above, many participants spoke of the intersection between poverty, mental illness and addictions. Many identified income support (the Ontario Disability Support Program or ODSP) as creating a major barrier for people with mental health disabilities. They identified that ODSP levels are set below the poverty level, and that people with addictions still face restrictions when applying for ODSP. The OHRC also heard that the application process for ODSP is onerous for people with mental health disabilities. ODSP was also criticized for keeping people in non-employment situations by clawing back extra earned income. Some participants noted that ODSP does not provide people with enough transportation money for people to get to their medical appointments.

5. Employment

Participants noted that barriers to employment include employers that rely on stereotypes when hiring and firing, and lack awareness of the duty to accommodate people with mental health disabilities and addictions. In addition, the OHRC heard that individuals with mental health disabilities do not have proper educational opportunities to obtain employment without subsidies or job training, which is also limited. Return-to-work processes were also described by some participants as onerous and restrictive.

6. Housing

Participants echoed what the OHRC heard in its housing consultation: people with mental health disabilities often lack access to adequate, affordable supportive housing and people tend to face discrimination in rental housing at very high rates. Municipal practices and zoning by-laws were also seen as a problem in that they can prevent the development of affordable housing for people with mental health disabilities.

7. Consent and Capacity Issues

Some participants raised concerns about people's ability to know their rights to consent and refuse treatment and assert these rights in mental health institutions or before the Consent and Capacity Board. Some participants identified practices undertaken by the Consent and Capacity Board, and under the *Mental Health Act* and *Personal Health Information Protection Act*, as potentially raising human rights concerns. Concerns were also raised about older people's access to consent and capacity rights in the long-term care system. Others identified concerns with respect to substitute decision-makers or legal guardians assisting people in presenting their cases before the Human Rights Tribunal of Ontario and other administrative tribunals. Participants were divided about whether or not the OHRC should become involved in this overall area.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

8. Criminal justice system

Many interviewees noted the link between the lack of mental health services and involvement in the criminal justice system. They noted concerns about arrests and detention for behaviour associated with disability that resulted from involvement in less serious crimes. In addition, participants were concerned about the use of tasers on people with mental health issues, and their lack of access to appropriate medical treatment in prisons. People with mental health disabilities are more likely to be in conflict with the criminal justice system and receive criminal records. This can have a major impact on their ability to access housing, employment and volunteer opportunities.

9. Education

Among the issues that were raised with the OHRC regarding education was the concern that elementary and secondary schools did not have the resources to deal with students with mental health disabilities, resulting in young people falling through the cracks. Some participants identified the prevalence of discriminatory attitudes in classrooms. Others indicated that post-secondary institutions and business schools are not sufficiently accommodating students with mental health disabilities.

10. Additional issues

The OHRC also heard about barriers to transportation, such that people are sometimes barred from using transit because of perceived mental health disabilities. Strong concerns were raised about Aboriginal children and youth, who are frequently at high risk for suicide. A very specific concern raised was that people with mental health disabilities are often deemed ineligible for mortgages or insurance because they are perceived to be at high risk for default.

V. Proposed Approaches

Participants in the consultation suggested the following approaches, which they believe are important to the development of any human rights mental health strategy. The OHRC will consider incorporating these principles into its strategy.

- Participants stated that because the issues cut across so many areas (e.g. housing, criminal justice, etc.), the OHRC should consider not limiting its involvement to one area.
- Participants identified that it was important to address discrimination based on mental health and its intersections with other *Code* grounds
- Participants suggested that any human rights mental health strategy should be broad, and focus on the rights of people with less severe and severe mental health disabilities and addictions, as well as perceived disabilities.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

- The OHRC was encouraged to build partnerships with different organizations and consult with people with mental health disabilities.

Areas of Concern:

Given the number of issues that were identified by participants, the OHRC may consider developing interventions to address issues in some or all of the following areas:

- Anti-Stigma/Anti-Discrimination Awareness
- Housing
- Employment
- Criminal Justice
- Income Support
- Education
- Lack of Access to Health Care

VI. Next Steps

The OHRC welcomes your feedback related to the areas of concern identified and/or specific interventions that it should consider undertaking.

Please feel free to comment on any of the information provided in this paper, or on the questions identified below:

Within the Areas of Concern identified above, are there priority areas that the OHRC should consider in its strategy?

Within the Areas of Concern identified above, are there priority initiatives that the OHRC should consider undertaking?

Written comments can be mailed, faxed or e-mailed to the OHRC at the following address:

**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**

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

Fax #: (416) 314-4533

E-mail: consultations@ohrc.on.ca

Your written comments should be provided to the OHRC no later than **December 24, 2009**.

Please provide contact details, including your name, organization (if applicable), address, phone number, and e-mail address.

Information provided during the consultation is subject to the requirements of the *Freedom of Information and Protection of Privacy Act*. The information 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. Anonymous submissions will not be considered.

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

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

(416) 314-4507, or

1-800-387-9080 (Follow the instructions to speak to staff about public education).

TTY contact information: (416) 326-0603 or 1-800-308-5561.

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

Endnotes

¹ Although definitions of mental illness vary, Health Canada indicates that mental illnesses are characterized by alterations in thinking, mood or behaviour (or some combination thereof) associated with significant distress and impaired functioning over an extended period of time. Health Canada, *A Report on Mental Illnesses in Canada* (Ottawa: Health Canada, 2002), at 16.

² The OHRC is aware of the lack of consensus around terms describing mental health issues and people experiencing them. Differences in terminology are based in differences in ideologies in how to conceptualize mental health and the relationship between the mental health system and those who use or do not use it. Many terms are criticized as being inadequate and stigmatizing by those experiencing mental health issues. Labels for people with mental health issues can stigmatize people when they reduce individual identities to a medical “problem.” Where possible, people should be referred to by the term they use to self-identify.

However, recognizing that a diversity of experience exists among individuals with experiences of mental health issues, and the fluidity of language, in the context of this paper, the OHRC will use the terms “mental health disability” and “people with mental health disabilities”. Participants thus far in the consultation have identified that the OHRC should consider using terms that reflect health, avoid medicalized definitions, reflect domestic and international protections for people with disabilities, apply to people who may or may not seek treatment, and are adopted by the consumer survivor movement. In its guide, *“A Way with Words and Images: Suggestions for the portrayal of people with disabilities,”* The Government of Canada has recommended using the term “mental health disabilities” (Ottawa: Human Resources and Development Canada, 2006).

³ For example, Canada has signed the *Declaration of the Rights of Disabled Persons*, and the United Nations’ *Convention on the Rights of Persons with Disabilities*. The latter is a legally binding convention that provides for non-discrimination to allow for the civil, political, economic, social and cultural rights of people with disabilities. In addition, the international community has adopted the UN General Assembly resolution, *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*. Domestically, the *Canadian Charter of Rights and Freedoms* outlines equality protections under section 15, which provides for the right to be free from discrimination on the basis of mental and physical disability, among other grounds.

⁴ *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996J 3 S.C.R. 566. para. 31.; *Quebec (Commission des droits de la personne et des droits de jeunesse) v. Montreal (City)*; *Quebec (Commission des droits de la personne et des droits de las jeunesse) v. Boisbriand (City)* (3 May 2000) SCC 27. [Mercier], para.77

⁵ Amendments to the *Human Rights Code*, which took effect on June 30 2008, created three pillars in the human rights system. After the enactment of the *Human Rights Code Amendment Act, 2006*, the OHRC no longer accepted human rights complaints. All new applications complaining about discrimination are now filed directly with the Human Rights Tribunal of Ontario. The OHRC became more focused on proactive measures to prevent and address discrimination using its functions of public education, policy development, research and analysis, inquiry powers, and legal intervention. The Human Rights Legal Support Centre was also created to provide assistance for applicants in the system.

⁶ *ADGA Group Consultants Inc. v. Lane*. (2008), CanLII 39605 (ON S.C.D.C.)

⁷ *Entrop v. Imperial Oil Ltd.* (2000), 50 O.R. (3rd) 18 (C.A.)

**Ontario Human Rights Commission
Human Rights Mental Health Strategy
Public Consultation Document**

⁸ *Imperial Oil v. Communications, Energy & Paperworkers Union of Canada, Local 900*. (2009), (ON.C.A. 420)