



# Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

Submission to Dr. Marie Bountrogianni,  
Minister of Citizenship and Immigration  
and Dr. Kuldip Kular, Parliamentary Assistant

Concerning

*Ontarians with Disabilities Act, 2001*

March 23, 2004

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PROMOTING PATIENTS' RIGHTS



## Our Logo

Our logo, with three divisions, places the patient at the centre, with the advocate and the patient's support network on either side. In our practice of advocacy, we at the Psychiatric Patient Advocate Office (PPAO) proceed from the patient's perspective, the heart of the matter. We believe that creating caring systems requires the effort of all those involved.

We chose the heart symbol as our logo because it best reflected our vision, values and principles:

- that consumers be actively involved in all decisions affecting their life, care and treatment;
- that consumers of mental health services be treated with dignity and respect;
- that consumers direct the advocacy process, using the advocate as a resource;
- that Patient Advocates respect each client's personal choices and provide advocacy from the client's point of view.



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March 23, 2004

Dr. Marie Bountrogianni, Minister of Citizenship and Immigration, and  
Dr. Kuldip Kular, Parliamentary Assistant  
400 University Avenue – 6<sup>th</sup> Floor  
Toronto, ON M7A 2R9

**Re: Ontarians With Disabilities Act, 2001**

Dear Dr. Bountrogianni and Dr. Kular:

We wish to thank you for the opportunity to propose changes to the *Ontarians with Disabilities Act, 2001* (“ODA”). The Psychiatric Patient Advocate Office (PPAO) supports this legislation as one of the many ways Ontario can become a more inclusive society where individuals with disabilities fully participate and contribute. We are encouraged that the government recognizes the need for comprehensive and effective legislation as a way of creating a province where no new barriers are created and existing ones are removed.

The PPAO is a quasi-independent program of the Ministry of Health and Long-Term Care, established in 1983. Our mandate is to protect the rights and entitlements of patients in psychiatric facilities designated under the Mental Health Act. Our office provides more than 20,000 rights advice visits per year and works on more than 4,000 individual advocacy issues and 140 systemic advocacy issues. As such, we have an interest in the implementation and subsequent evaluation of this legislation.

The ODA provides the Ontario government with a unique opportunity to change societal attitudes, stereotypes and beliefs about individuals with disabilities by adopting a broad definition of “disability” and identifying barriers to equity of access, including employment. Successful implementation of this legislation will require the dedication of resources, a broad based public education program, and engagement of all stakeholders, including individuals with disabilities.

While we are encouraged by the proposed provisions under the ODA, we have identified several areas of improvement, which we believe will strengthen the ODA to provide maximum protection and opportunities for individuals with disabilities, thereby ensuring its effectiveness. Please find attached our submission, including comments and corresponding recommendations. We would be pleased to discuss our submission with you further should you deem it necessary. You can contact me directly at (416) 327-7007, or David Simpson, Program Manager at (416) 327-7004.

Once again, thank you for the opportunity to have input into this very significant legislation.

Vahe Kehyayan  
Director

c.c.: Hon. George Smitherman, Minister of Health and Long-Term Care

Mr. Phil Hassen, Deputy Minister

c.c.: Mary Kardos Burton, Assistant Deputy Minister, Community Health Division

encl.: Submission of the Psychiatric Patient Advocate Office re: *Ontarians with Disabilities Act, 2001*

## **Submission of the Psychiatric Patient Advocate Office re: *Ontarians with Disabilities Act, 2001***

### ***Summary of Recommendations***

- The PPAO recommends that the *ODA* adopt the principle of ‘zero tolerance’ to harassment and discrimination of individuals with disabilities.
- The PPAO recommends that the definition of disability be flexible, inclusive, and broadly defined, such that it includes present and past conditions, as well as a subjective component allowing for self-identification or a perception of disability.
- The PPAO recommends the formation of an independent advocacy and rights protection agency that can monitor and promote systemic change and provide leadership in the elimination of physical and attitudinal barriers.
- The PPAO recommends that a public education campaign be designed to foster tolerance, understanding and acceptance of individuals with disabilities.
- The PPAO recommends the formation of an independent advocacy and rights protection agency to monitor and promote systemic change and provide leadership in the elimination of physical and attitudinal barriers.
- The PPAO recommends that additional funding be provided to Legal Aid Ontario and the Ontario Human Rights Commission to ensure that individuals whose rights have been violated are not further stigmatized and marginalized by being denied access to justice.
- The PPAO recommends that an individual, group or organization have access to an independent professional advocate should they wish assistance in navigating the complaints process and exercising their rights.
- The PPAO recommends that a clearly defined and articulated complaints process be established with timelines for complaint investigation to ensure timely resolution.
- The PPAO recommends that a broad range of options be available to the individual, group or organization for complaints resolution and redress.
- The PPAO recommends that minimum penalty provisions and effective enforcement mechanisms be put in place to respond to those who contravene the Act.
- The PPAO recommends that the government maximize the participation of individuals from all sectors, including the mental health community, to ensure that individuals with a wide range of disabilities and a wide range of ages are equal

partners in the design of guidelines, standards and regulations, implementation, monitoring and evaluation of the Act and the Regulations.

- The PPAO recommends that the Accessibility Advisory Council have a mandate to consult publicly and report publicly on their findings.
- The PPAO recommends that the Accessibility Advisory Council report to the Minister through an arm's-length relationship so that it is independent and not seen as "an arm of the government" to maximize its accountability to the public.
- The PPAO recommends that the membership on the Accessibility Advisory Council be open to persons with a wide range of disabilities by establishing a fair, open and transparent process so that all individuals have an opportunity to apply for membership and participate on the Council.
- The PPAO recommends that the Accessibility Directorate of Ontario be comprised of individuals with a wide range of disabilities.
- The PPAO recommends that the Directorate be accountable to the community by reporting publicly on its activities annually.
- The PPAO recommends that mechanisms be developed to monitor compliance and enforcement to ensure that accessibility plans are effective.
- The PPAO recommends that the evaluation criteria, including performance standards, indicators and outcome measures be clearly articulated in the early stages of implementation so that the Minister can collect the necessary data throughout the five-year period.
- The PPAO recommends that the Accessibility Advisory Council be involved in the review and evaluation process.
- The PPAO recommends that the Minister of Citizenship and Immigration set clear, concise goals and milestones and develop an action plan to identify the resources required to achieve the desired outcome.
- The PPAO recommends that the Minister report not less than annually on the progress of the implementation, monitoring and evaluation of the *ODA*.
- The PPAO recommends that the government spend equal resources on addressing attitudinal and physical barriers.
- The PPAO recommends that the Act be strengthened and extended to cover all sectors of the community, and require the removal and prevention of all barriers in both the private and public sector and within a given time period.

# **Submission of the Psychiatric Patient Advocate Office re: *Ontarians with Disabilities Act, 2001***

## ***Background***

The Psychiatric Patient Advocate Office (PPAO) made a submission in 1998 to the Minister of Citizenship, Culture and Recreation on the “Discussion Paper: Preventing and Removing Barriers for Ontarians with Disabilities.” The PPAO made further submissions in December of 2001 to the Standing Committee on Finance and Economic Affairs. In our submissions we presented several recommendations that we believe are still relevant and which speak directly to the barriers faced by individuals with mental illness.

Most of the barriers faced by our clients (i.e.: persons with mental illness) are those that are not physical barriers but those that are attitudinal and invisible. Some of these include: stigma, lack of services, barriers to accessing services, lack of service options and choices, ineffective avenues of complaint or remedy when discrimination occurs, lack of real and meaningful opportunities for employment, education, re-training, recreation, socialization, culture and equality of opportunity to achieve full participation in society. At the time of our submission in 1998 we noted that most individuals with disabilities live in poverty and that the unemployment rate is very high. This issue of poverty has not changed as our clients still receive a personal needs allowance of \$112.00 per month on which to meet their needs.

Poverty is a barrier to full participation in society and one that the Ontario government must immediately address. If opportunities are to be seized, adequate resources must be provided including an increase in the personal needs allowance, an increase in the shelter allowance, funding for training and education, adequate, reliable and available transportation and affordable and safe housing must be available. Without these supports and services, the protections offered under the *Ontarians with Disabilities Act, 2001* (“ODA”) would mean little.

## ***Purpose***

While the PPAO is pleased that the legislation includes a statement of “purpose”, the PPAO recommends that the purpose be expanded to include the principle of ‘zero tolerance’ with respect to harassment and discrimination of individuals with disabilities.

## **Recommendation**

- The PPAO recommends that the *ODA* adopt a ‘zero tolerance’ approach to harassment and discrimination.

## ***Definitions***

The PPAO has advocated for a definition of disability that is broad, inclusive and flexible and that is consistent with the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. We are pleased that the definition of disability in the *ODA* includes individuals with mental disorders and individuals with mental impairments. However, we are concerned that the *ODA* is silent with respect to how a disability is identified, in that it does not appear to allow for individuals to self-identify a disability. We are concerned that some individuals with a mental illness may be excluded by the Act simply because they have not been "diagnosed" by a health care professional and therefore would not fit the definition.

The Supreme Court of Canada has made it clear in recent case law<sup>1</sup> that disability must be interpreted to include a subjective component as discrimination is often based as much on perceptions, myths and stereotypes as actual functional limitations. A definition that emphasizes the *effect* of discrimination because of disability and society's response to a real or perceived disability further enhances dignity, respect and equality. The PPAO recommends that the government broaden the current definition to make it more flexible to include perception of a disability or a history. The PPAO also recommends that a subjective component be included in the definition to allow individuals to self-identify as a person with a disability because of a condition without functional limitations, but who may still be subjected to discrimination.

## **Recommendation**

- The PPAO recommends that the definition of disability be flexible, inclusive, and broadly defined, such that it includes present and past conditions, as well as a subjective component allowing for self-identification or a perception of disability.

## ***Education***

The *ODA* provides individuals with disabilities opportunities. This requires an education program to raise awareness, educate the public about the contributions that people with disabilities make to society, remove the stigma associated with having a disability, and change the attitudes of most sectors of society. Education should begin with students in elementary school, continuing through to the post secondary education level. Colleges and Universities should design curricula that address disability issues from the perspectives of people with disabilities and promote a greater understanding of these issues.

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<sup>1</sup> *Granovsky v. Canada (Minister of Employment and Immigration)* [2000] 1 S.C.R. 703 & *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 jeunesse) v. Boisbriand (City)* [2000] 1 S.C.R. 665.

Through education programs, individuals with disabilities will learn about their rights, thereby empowering them to exercise them. Such a program should educate all stakeholders, including but not exclusive to the public, families, and service providers.

#### Recommendations

- The PPAO recommends the formation of an independent advocacy and rights protection agency to monitor and promote systemic change and provide leadership in the elimination of physical and attitudinal barriers.
- The PPAO recommends that a public education program be designed to foster tolerance, understanding and acceptance of individuals with disabilities.

#### ***Promoting Systemic Change***

To promote systemic change, the PPAO recommends the creation of an independent, or quasi-independent advocacy and rights protection agency, similar to the PPAO model to monitor complaints and non-compliance reports from individuals with disabilities. Such a program would reduce their vulnerability by supporting them to self-advocate or by giving a voice to their issues when they are unable to do so.

#### Recommendation

- The PPAO recommends the formation of an independent advocacy and rights protection agency to monitor and promote systemic change and provide leadership in the elimination of physical and attitudinal barriers.

#### ***Access to Justice***

Another mechanism for promoting systemic change could be increasing funding to Legal Aid Ontario and the Ontario Human Rights Commission (OHRC) to enable Ontarians with disabilities access legal representation to pursue their rights and entitlements and have access to justice. Delays in complaint investigation and resolution are by their nature significant barriers to rights protection.

#### Recommendation

- The PPAO recommends that additional funding be provided to Legal Aid Ontario and the OHRC so that individuals who believe that their rights have been violated are not further stigmatized and marginalized by being denied access to justice.

#### ***Complaints Process***

The *ODA* is silent about complaints. For a complaint to be filed about any barrier listed in the *ODA*, the legislation is silent as to where to take the complaint and what is to be expected. The PPAO recommends that for the *ODA* to be effective it must have a clear and transparent complaints process that is clearly set out, available and accessible to

anyone who needs to complain, and that provides timely resolution or remedies. The complaints process must identify to whom to complain, who may complain, how to complain, and what to expect in terms of timeframes and resolution. If the intention of the government is to rely upon the OHRC to investigate complaints under the *ODA*, then this must be clearly articulated. However, the OHRC currently accepts only complaints from individuals who have been subjected to discrimination. The *ODA* must also allow complaints from groups or organizations to be filed on behalf of individuals.

Recognizing that the complaints process could become complex and difficult to navigate, and that often the system undermines a person's right to autonomy and self-determination, access to a professional advocate could be an essential component of facilitating access to a complaints process for individuals with a disability. An advocate could assist the individual throughout the process and as an objective party assist the individual in exercising his/her rights.

A transparent complaints process should also include clear timelines for when complaints will be investigated and decisions made as to the actions to be taken. The *ODA* must include a range of options for pursuing complaint resolution and the individual, group or organization must maintain control of their complaint as to how it progresses through the process.

All complaints must be investigated and resolved in a timely manner if the *ODA* is to be effective, otherwise, the complaints process becomes a barrier to access itself. Broad-based education will be necessary so that individuals know their rights, know the recourse available to them and know how to exercise these rights. The *ODA* must also include minimum sanctions, penalties, and effective enforcement mechanisms for those who contravene the law to hold them accountable.

### Recommendations

- The PPAO recommends that an individual, group or organization have access to an independent professional advocate should they wish assistance in navigating the complaints process and exercising their rights.
- The PPAO recommends that a clearly defined and articulated complaints process be established with timelines for complaint investigation to ensure timely resolution.
- The PPAO recommends that a broad range of options be available to the individual, group or organization for complaints resolution and redress.
- The PPAO recommends that minimum penalty provisions and effective enforcement mechanisms be put in place as a way to respond to those who contravene the Act.

### ***Involvement of Persons with Disabilities***

While the PPAO is pleased that efforts have been made to include individuals with

disabilities in the Accessibility Advisory Council and the Accessibility Advisory Committees, the PPAO recommends that this membership include people with a wide range of disabilities. The PPAO also recommends that this membership include individuals of all ages as age impacts on how individuals experience disadvantage. This will ensure that people from all sectors, including the mental health community, are equal partners in various aspects of the implementation and evaluation of the legislation, design of guidelines, standards and regulations, implementation, and monitoring and evaluation of the Act and the Regulations.

### Recommendation

- The PPAO recommends that the government maximize the participation of people from all sectors, including the mental health community, to ensure that people with a wide range of disabilities and a wide range of ages are equal partners in the design of guidelines, standards and regulations, implementation, monitoring and evaluation of the Act and the Regulations.

### ***Accessibility Advisory Council***

The PPAO values the benefits of having an Accessibility Advisory Council. The PPAO makes several recommendations to further strengthen the mandate and accountability of the Council.

### Recommendations

- The PPAO recommends that the Accessibility Advisory Council have a mandate to consult publicly and report publicly on their findings.
- The PPAO recommends that the Accessibility Advisory Council report to the Minister through an arm's-length relationship so that it is independent and not seen as "an arm of the government," and to maximize its accountability to the public.
- The PPAO recommends that the membership on the Accessibility Advisory Council be open to persons with a wide range of disabilities by establishing a fair, open and transparent process so that all individuals have an equal opportunity to apply for membership and participate on the Council.

### ***Accessibility Directorate of Ontario***

The PPAO supports the formation of an Accessibility Directorate, provided that it includes individuals with a wide range of disabilities. Involvement by those with various disabilities will make the work of the Directorate more responsive and accountable to the individuals that the ODA is intended to assist. Accessibility plans should be reviewed by individuals who have a disability and any recommendations they make should be enforced to ensure maximum accessibility. Monitoring compliance and enforcement

mechanisms would be essential, if the Plans are to be effective in promoting change and eliminating barriers. Again, without time lines attached there may be little motivation for action to be taken within an appropriate time period. The Directorate must be accountable to the community at large and to the people that it is intended to assist.

### Recommendations

- The PPAO recommends that the Accessibility Directorate of Ontario be comprised of individuals with a wide range of disabilities.
- The PPAO recommends that the Directorate be accountable to the community by reporting publicly on its actions annually.
- The PPAO recommends that mechanisms be developed to monitor compliance and enforcement to ensure that accessibility plans are effective.

### ***Review of the Act***

The PPAO is supportive of the provisions for a review of the *ODA* within five years after it comes into force. However, the PPAO recommends that evaluation criteria be established from the outset. This will assist in the collection of data throughout the five-year period and eliminate barriers in an orderly and timely manner. The Minister must involve individuals with a wide range of disabilities in setting these evaluation criteria.

### Recommendations

- The PPAO recommends that the evaluation criteria, including performance standards, indicators and outcome measures be clearly articulated in the early stages of implementation so that the Minister can collect the necessary data throughout the five-year period.
- The PPAO recommends that the Accessibility Advisory Council be involved in the review and evaluation process.
- The PPAO recommends that the Minister of Citizenship and Immigration set clear, concise goals and milestones and develop an action plan to identify the resources required to achieve the desired outcome.
- The PPAO recommends that the Minister report not less than annually on the progress of the implementation, monitoring and evaluation of the *ODA*.

### ***Elimination of Barriers***

The PPAO is pleased that the government has included in their definition of "barrier" not only the physical barriers experienced by individuals with mental disorders or individuals with mental impairment, but also the attitudinal barriers that are often the

most difficult to overcome and to combat. We recommend that the government spend equal resources on addressing attitudinal and physical barriers. Giving equal attention to both types of barriers will illustrate the government's commitment to addressing barriers at both the micro and the macro level and in promoting systemic change within the province. All sectors of society must recognize that barriers are more than obstacles to access and there must be a concerted effort on the government's part if individuals with disabilities are to achieve their full potential in an inclusive and accepting community.

### Recommendations

- The PPAO recommends that the government spend equal resources on addressing attitudinal and physical barriers.
- The PPAO recommends that the Act be strengthened and extended to cover all sectors of the community, and require the removal and prevention of all barriers in both the private and public sector within a given time period.

### ***Conclusion***

The Psychiatric Patient Advocate Office is supportive of the *ODA* and views this as a first step in a long process. We advocate for equitable treatment for individuals with mental disorders and individuals with mental impairment and see the *ODA* as a step towards achieving equity, access and full participation in society. We encourage the government to review our recommendations and implement them to strengthen the *ODA*, thereby affording maximum protection to individuals with disabilities.

The PPAO believes that there is much to be done before we could have an inclusive and accepting society for individuals with disabilities, but has faith that our society can rise to meet this challenge and exceed all expectations. It will take much effort on the part of all sectors, but with a strong *ODA* and consumer participation and involvement, the dream will become a reality.