

Fair policy a long time in coming

February 20, 2008

CAROL GOAR

Speed has never been Barbara Hall's forte. The chief of the Ontario Human Rights Commission is thorough, thoughtful and fair-minded.

All of those qualities were evident in the draft policy released by the commission last week on the disclosure of mental health information held by police.

But it was a long time in coming. Psychiatric survivors had been fighting for six years to shield sensitive medical records from prospective employers and recruiters at voluntary agencies.

They had written letters to cabinet ministers and police chiefs. They had approached both Hall and her predecessor Keith Norton, pointing out that the Ontario Human Rights Code prohibits discrimination on the basis of mental disability. They had used every public forum available to argue that it is wrong to criminalize a person because of a suicide attempt, an adverse drug reaction or a psychiatric episode.

Finally, the human rights commission, which had always acknowledged the legitimacy of their complaints, published a 19-page set of guidelines for police and organizations checking the backgrounds of would-be employees or volunteers.

The policy is not yet final. The commission will hold public consultations until March 24.

Nor is it a government edict. It merely provides direction on how to apply the Human Rights Code.

But it does say clearly that "the disclosure of information by a police force may be a violation of the code if it goes beyond the bona fide criminal record of an individual or what is reasonably required to assess the safety risk an individual could pose."

It states emphatically that "concerns about public safety should not be based on improper assumptions about mental health."

And it provides a detailed list of tips for employers and police forces weighing their rights and responsibilities with regard to the screening of job applicants and volunteers.

For psychiatric survivors – many of whom have been stopped in their tracks by the disclosure of a long-forgotten nervous breakdown or a relative's well-meaning call for assistance – this is a breakthrough.

Their nightmare began in the late '90s, when the Ontario government ordered all school employees to undergo criminal background checks. Child-care agencies, voluntary organizations, sports clubs and facilities for the elderly and disabled rapidly followed suit.

The Ministry of Education required *criminal record* checks, which reveal whether a person has ever been convicted of an indictable offence or has charges pending.

But other employers and agencies went further, requiring *police record* checks. These include information on all contact between an individual and the police, including allegations, charges, complaints, testimony as witness or suspect and incidents related to the Mental Health Act.

Thousands of innocent people were caught in the net.

David Simpson, who heads Ontario's Psychiatric Patient Advocate Office, received distraught calls from students who had been denied voluntary placements and risked failing their courses. He heard from professionals who dared not switch jobs for fear of what might turn up in their police records. He heard from job seekers who had been red-flagged by police bureaucrats who knew little about mental illness.

"For people who are on the road to recovery, it can be a devastating setback," he says. "There is such a stigma attached to mental illness."

The human rights commission is not proposing a complete embargo on the release of non-criminal information. It recognizes that there are situations in which an individual's pattern of behaviour may warrant concern.

But it says organizations requiring police record checks must be able to show that a candidate's mental health history has a direct bearing on the kind of work he or would be doing. And it says police forces must undertake a detailed risk evaluation before deciding whether to release sensitive and potentially damaging information.

Many psychiatric survivors would have preferred that mental health records be placed entirely off-limits. Many employers would have liked an unrestricted right to find out as much as they can before hiring someone.

The commission struck a fair balance. But it is a shame it took so long.

(The draft policy can be found at www.ohrc.on.ca)

Carol Goar's column appears Monday, Wednesday and Friday.