



Psychiatric Patient Advocate Office

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

October 12, 2006

COPY

Ann Cavoukian
Commissioner
Information and Privacy Commissioner/Ontario
Suite 1400, 2 Bloor Street East
Toronto, ON M4W 1A8

Dear Ms. Cavoukian:

Re: Criminalization of Persons with Mental Illness through Police Record Searches

We are writing to bring your attention to an issue of great concern to the Psychiatric Patient Advocate Office (PPAO), the Canadian Mental Health Association, Ontario (CMHA, Ontario) and a large group of stakeholders within the mental health and addictions sector. Our concern relates to police practices pertaining to employment and volunteer records searches. Included within the mandate of the PPAO is the advancement of the legal and civil rights of persons with serious mental illness. CMHA's responsibility is to advocate for people with mental illness and their families and fight associated stigma and discrimination.

Police record searches are routinely requested by potential employers, volunteer agencies, recreational groups and other organizations that provide services to vulnerable persons. We believe that the practice of releasing non-criminal medical/personal information to a potential employer or volunteer group not only discriminates against persons with mental illness but also presents an unjustified invasion of privacy under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. It is in this light that we are asking you to investigate the collection and release of medical/personal information to potential employers and volunteer organizations.

As you are likely aware, many employers and other organizations request police record searches prior to hiring an applicant or allowing them to volunteer with the vulnerable sector. A police record search is often part of an agencies' screening process to ensure that an individual does not have a criminal history that could put the agencies' clientele at undue risk. Although the search requires consent by the applicant, consideration for the position is dependent on a satisfactory search.

Reports of detention under the *Mental Health Act (MHA)* are included in police records searches. Pursuant to section 17, a police officer can bring someone to a psychiatric facility for an examination as long as the person "apparently" has a mental disorder and has threatened or

attempted to harm themselves, or has behaved violently or caused someone to fear bodily harm, or has shown a lack of competence to care for themselves.

We have several concerns about the discriminatory practice of collecting and releasing information under the *MHA* to a third party. First, when an individual is detained under the *MHA*, the incident becomes part of their police record but this fact is never communicated to the individual. According to section 29(2) of *MFIPPA*, when personal information is collected on behalf of an institution, the individual affected shall be informed of: the legal authority of the collection; the principal purpose or purposes for which the personal information is intended to be used; and the contact information of an officer or employee of the institution who can answer questions the individual may have regarding the collection. Unfortunately, the majority of individuals only learn that a record exists when they apply for a position working with the vulnerable sector.

Second, we are concerned that the collection of information under the *MHA* and its subsequent disclosure to a potential employer is not consistent with its original purpose. Section 31(b) of *MFIPPA* requires that the information only be used for the purpose for which it was obtained. Clearly, recording detentions under the *MHA* is not acquired for the purpose of releasing the information to a potential employer in the future, and thus, not consistent with its original purpose.

Lastly, section 14(1) of *MFIPPA* states that personal information shall not be disclosed to any person other than the individual to whom the information relates except if the person provides written consent and if the disclosure does not constitute an unjustified invasion of personal privacy. Furthermore, section 14(3)(a) dictates that disclosure relating to medical, psychiatric or psychological history, diagnosis, conditions, treatment or evaluation is deemed an unjustified invasion of privacy that should not be disclosed. A disclosure of information collected under the *MHA* to a potential employer clearly breaches these two sections of *MFIPPA*, as it involves no criminality.

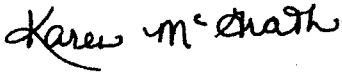
Although we appreciate the need to ensure the safety of vulnerable individuals, including these reports can pose tremendous obstacles to people attempting to secure employment and who pose no threat to the public. In addition, it perpetuates the stigma associated with mental illness. People who have been detained under the *MHA* will obviously be discouraged from applying to these positions although they may be very qualified. Persons viewing such a record will be given a false view of the nature of people who have been detained. Therefore, the presumption that detention under the *MHA* should lead to concern about an individual's fitness to work in the vulnerable sector is completely false. In fact, as people with mental illness maybe considered vulnerable themselves and are greatly benefited by having supports provided by peers, discouraging people who have experienced mental illness from applying for work in our field could have a negative impact on the quality of service being delivered.

We are asking you to investigate and review this practice and develop recommendations that do not breach the law. We, David Simpson, Acting Director of the PPAO and Karen McGrath, CEO of CMHA, Ontario are available to discuss this issue with you further.

Sincerely,



David Simpson
Director (A)
Psychiatric Patient Advocate Office



Karen McGrath
Chief Executive Officer
Canadian Mental Health Association, Ontario

c.c. Barbara Hall, Commissioner, Ontario Human Rights Commission
Andre Marin, Ombudsman of Ontario
Sandi L. Humphrey, Executive Director, Ontario Association of Chiefs of Police
Hon. George Smitherman, Minister of Health and Long-Term Care
Hon. Monte Kwinter, Minister of Community Safety and Correctional Services