



Psychiatric Patient Advocate Office

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

October 12, 2006

The Honourable Monte Kwinter
Ministry of Community Safety and Correctional Services
25 Grosvenor Street, 18th Floor
Toronto, ON M7A 1Y6

COPY

Dear Minister Kwinter:

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

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 addiction sector are extremely concerned about the common practice of police forces to disclose non-criminal information about our clients' involvement with the mental health system when conducting a police records search for employment or volunteer opportunities within the vulnerable sector.

If a person is detained by police under the *Mental Health Act*, this information is included in a police records search. Some police departments erroneously record such incidents as "arrests." The use of this harsh language creates an impression that the individual did something wrong and even suggests criminal activity, further stigmatizing the individual.

Although it may be argued that these searches are only conducted with the consent of the individual and it is the individual's choice to release the results to others, the impact is not lessened. In our opinion, the effect of the records check is discriminatory and contrary to the Ontario *Human Rights Code* and the Canadian *Charter of Rights and Freedoms* as it creates barriers for individuals with mental illness. Further, it presents an unjustified invasion of privacy under the *Municipal Freedom of Information and Protection of Privacy Act*.

The PPAO wrote to the Ontario Human Rights Commission in 2002 regarding our position that the information reported by police was discriminatory against people with mental illness. Keith Norton, Chief Commissioner at the time, responded to our letter and stated that "I agree with your concern that such a practice might be discriminatory against persons with mental illness and impede their successful reintegration into the community and their pursuit of life and career aspirations as responsible citizens." Copies of these two letters are attached for your reference.

Commissioner Norton then wrote about this issue to the Honourable Robert Runciman, Minister of Public Safety and Security, pursuant to section 29 of the *Human Rights Code* which permits inquiry into human rights matters. This letter and the response from the Minister to Commissioner Norton are attached for your review.

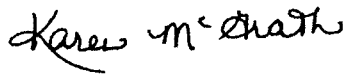
Unfortunately, the situation has not changed and discrimination persists today. It is in this light that we are asking you to investigate the collection and release of medical/personal information to potential employers and volunteer organizations. We would like you to work with police forces across the province to develop a consistent procedure that protects the rights of individuals with mental illness. The London Police Service has recently developed and implemented a new protocol for their police reference check program, which takes into account and addresses many of the concerns that we raise in this letter. Their new process could potentially be a model for all police services in Ontario. Although, some mental health and addiction stakeholders believe that there should be no release of information for non-criminal contact with the police.

We, David Simpson, Acting Director of the PPAO and Karen McGrath, CEO of CMHA, Ontario are available to discuss this issue with you further.

Yours truly,



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
Ann Cavoukian, Commissioner, Information and Privacy Commissioner/Ontario
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

Encls.



October 28, 2002

Chief Commissioner Keith Norton
Ontario Human Rights Commission
180 Dundas Street W. 8th Floor
Toronto ON M7A 2R9

Dear Mr. Norton

Re: Criminalization of Persons with Mental Illness through Police Records

I am writing to you today to bring to your attention an issue that is of great concern to our office and our clients. . A number of clients have brought this issue to us over the past several months. The Psychiatric Patient Advocate Office ("PPAO") is a quasi-independent program of the Ministry of Health and Long-Term Care. Part of our mandate is to advance the legal and civil rights of persons with serious mental illness. It is in this light that I am contacting you to ask that you investigate how police conduct a request for a "police record search" by potential employers, what information is included in a "police record search" and what information is then provided to the person who was the subject of the record search. These searches are routinely requested by potential employers, volunteer groups, sports clubs and other organizations that provide services to children or vulnerable persons. Our clients have brought to our attention that the information searched and reported by police forces across Ontario includes non-criminal contact with the police for mental health reasons. We believe that this practice discriminates against persons with mental illness and prevents their successful re-integration into the community and their pursuit of life or career aspirations as responsible citizens.

Many employers and others as noted above, request the conduct of police record searches prior to hiring an applicant or allowing them to volunteer in providing services to vulnerable persons. The search assists agencies in ensuring that the individual does not have a criminal history that could put the agencies' clientele at undue risk. The search is done on the consent of the applicant; however, often consideration for the position is dependent on a satisfactory search.

Although the process varies slightly across the province, in general, a police department receives a search request from an agency at which time a report is generated listing not just convictions but prior arrests and "incidents". An "incident" may involve any interaction with the police that generates a report. When a police search indicates some type of

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history/contact with the system, the agency requesting the search is notified that prior contact has occurred with the police. The person is then placed in the unenviable position of describing the incident to the potential employer or to forgo the position.

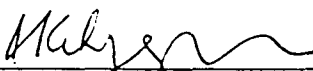
Persons with mental illness may come into contact with the police for a variety of reasons, many of which are not criminal in nature. For example, the police may transport a person to hospital whose condition is “deteriorating” or a physician may require the police to have a person returned to him or her if the doctor believes that the terms of a Community Treatment Order are not being met. Police contacts with persons with mental illness are increasing yearly; the London Police recently recognized that mental illness “has been inappropriately downloaded to the police service” (“Mentally Ill ‘turned into criminals’”, *London Free Press*, September 25, 2002).

While we can appreciate the need for police forces to maintain accurate records of all interactions, whatever the cause, we are greatly concerned that information maintained by the police force that is not of a “criminal” nature is searched and reported for the purposes of obtaining a job, volunteer position, etc. An organization is made aware of a “police history” before job offers are made. As such, a person with a history of mental illness who has had contact with the police force may be forced to disclose this disability to the potential employer before a decision is made. This may lead to discriminatory action on the part of the employer or may cause the individual with mental illness to abandon the opportunity for fear of discrimination. Not only does this open the door to abuse, but the practice is demeaning and insulting to persons who are, or were at one time, mentally ill.

It would be possible for police forces to filter information relevant to mental health contacts out of material that makes up a police records search for the purposes of employment or volunteer positions. While employers would continue to receive information that a person has no “criminal” contacts with the police, information regarding the person’s health would remain private. We are concerned that the practice may reinforce the stereotype that persons with mental illness are “dangerous” and a prior mental health history with the police should be reported in the same way that a criminal background would be. Thus, current police practices may impede these individuals’ quest for wellness, recovery and re-integration into the community. As well, the current practices do not reflect that individuals with mental illness can be contributing members of society.

We are asking that you, as Chief Commissioner to the Ontario Human Rights Commission, review this practice, develop recommendations that do not offend human rights and provide education to employers and police forces around this issue. We would appreciate your assistance in reviewing this matter. I am available to discuss this issue with you further.

Sincerely,



Vahe Kehyayan
Director

c: Lora Patton, Legal Counsel

Ontario Human
Rights Commission

Chief Commissioner

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Commission ontarienne
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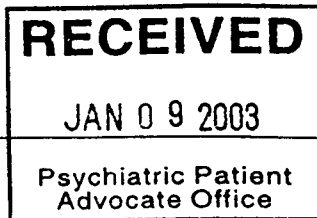
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Ontario



MC
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December 31, 2002

Vahe Kehyayan, Director
Psychiatric Patient Advocate Office
Box #28, Suite 802
55 St Clair Ave W
Toronto, ON M4V 2Y7

Dear Vahe Kehyayan:

RE: Disclosure of personal information relating to mental illness through police records searches

I am responding to your letter of October 28, 2002 on the issue of non-criminal contact information regarding persons with mental illness being disclosed as a result of police records searches requested by potential employers, volunteer groups, sports clubs and other organizations that provide services to children or vulnerable persons.

I agree with your concern that such a practice might be discriminatory against persons with mental illness and impede their successful re-integration into the community and their pursuit of life and career aspirations as responsible citizens. I have decided to write to the Ministry of Public Safety and Security to inquire further into this matter and have attached my correspondence to them for your information.

Please note that if a complaint is received in relation to this matter, it will be processed in accordance with the Commission's usual procedure.

Thank you for bringing this matter to my attention. If you have any questions please feel free to contact me at the number above. Alternatively, your staff may wish to contact Jeff Poirier, Senior Policy Analyst, at the Commission at 416-314-4539 to discuss the matter further.

Yours truly,

Keith C. Norton, Q.C., B.A., LL.B.
Chief Commissioner

Ontario Human
Rights Commission

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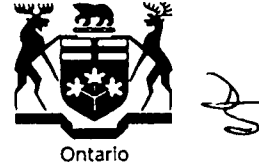
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COPY



December 31, 2002

Hon. Robert Runciman
Minister of Public Safety and Security
George Drew Bldg
18th Floor
25 Grosvenor St
Toronto, ON M7A 1Y6

Dear Minister:

**RE: Disclosure of personal information relating to mental illness through
police records searches**

In keeping with my mandate under section 29 of Ontario's *Human Rights Code* (the "Code") to inquire into human rights matters, I am writing to you to express concern on the issue of non-criminal contact information regarding persons with mental illness being disclosed as a result of police records searches requested by potential employers, volunteer groups, sports clubs and other organizations that provide services to children or vulnerable persons.

The Director of the Psychiatric Patient Advocate Office / Ontario (Ministry of Health) has expressed concern to me that such a practice is having a discriminatory effect in "criminalizing" persons with mental illness and impeding their successful re-integration into the community and their pursuit of life and career aspirations as responsible citizens.

While it is permissible under the *Code* to inquire about a record of offence for which a pardon has not been granted, police record inquiries made by employers and other organizations and any resulting disclosure of information by police forces might constitute a violation of the *Code* if such inquiry and disclosure went beyond the *bona fide* criminal record of an individual to include information directly or indirectly relating to mental illness, another disability or other prohibited grounds of discrimination.

I am requesting that your ministry verify whether or not it is the practice of police forces in Ontario to release personal information about an individual's disability, or other information related to protected grounds of discrimination under the *Code*, in the course of conducting "police record searches" requested by employers or other organizations.

Please note that if a complaint is received in relation to this matter, it will be processed in accordance with the Commission's usual procedure.

My Commission would be pleased to discuss this matter further. I look forward to receiving your reply.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Norton', written over a horizontal line.

Keith C. Norton, Q.C., B.A., LL.B.
Chief Commissioner

Copy Vahe Kehyayan, Director
Psychiatric Patient Advocate Office / Ontario

Chief Tom Kaye, President
Ontario Association of Chiefs of Police

Ministry of Public Safety
and Security

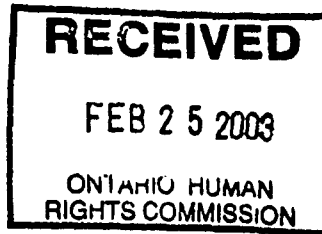
Ministère de la Sécurité
et de la Sécurité publique

Office of the Minister

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CM03-00124

FEB 24 2003

Mr. Keith C. Norton
Chief Commissioner
Ontario Human Rights Commission
180 Dundas Street West
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Dear Mr. Norton: *Keith*

Thank you for your letter inquiring about the practice of Ontario police services pertaining to the release of personal information.

The Law Enforcement and Records Managers' Network (LEARN) is administered by the Information Technology sub-committee of the Ontario Association of Chiefs of Police (OACP). This ministry has no direct involvement in the process, nor have we introduced legislation relating to the LEARN. The LEARN published "Guidelines for the Establishment of a Policy/Procedure for the Release of Information from Police Agency Files" dated April 1999, as a reference for police services.

These guidelines contain only recommendations to the Chief on the release of personal information. The Chief has absolute responsibility pertaining to the use and dissemination of personal information. Normally, police agencies would release information regarding mental illness only if this information was completely relevant to the type of clearance request that was being sought. For example, information regarding a subject's mental health would be pertinent to organizations responsible for the care of children, students seeking counsel or other vulnerable members of society.

A police service may record "cautions" based on a police officer's observations of a subject's demeanour while the subject is dealing with authority figures. Police agencies, however, do not normally collect information about a subject's mental health or condition. Nor are police officers trained to provide medical diagnosis.

I trust this information will assist you. Again, thank you for writing.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Runciman".

Robert W. Runciman, MPP
Leeds-Grenville
Minister