

**SUBMISSION BY THE ONTARIO FEDERATION OF LABOUR (OFL)
ON THE ISSUE OF MENTAL HEALTH DISCRIMINATION
AND POLICE RECORD CHECKS
TO THE ONTARIO HUMAN RIGHTS COMMISSION (OHRC)
APRIL 7, 2008**

Organizational Background

The OFL is Ontario's central labour body. Our main purpose is to meet the demands of an energetic and expanding unionized workforce. The Federation speaks for 700,000 organized Ontario workers and provides its affiliated labour councils and local unions with services in the fields of communications, education, research, legislative and political action, human rights, health and safety, workers' compensation and basic education skills.

The OFL regularly makes presentations and submissions to the provincial government. We provide internal education and mount public campaigns to achieve labour's objectives.

The OFL acknowledges the request from Ontario Human Rights Commission to invite the public to make submissions in response to their November 28, 2007 draft policy on *Mental Health Discrimination and Police Record Checks*. This public consultation should allow individuals and organizations the opportunity to have real input into this draft document. The result will be an improved document which will better serve the people of Ontario.

The document addresses disability-related concerns that arise in the context of police record checks, how the Ontario's Human Rights Code applies and the responsibilities of all parties involved ensuring that their policies and practices are not discriminatory.

Employment and Ontarians with Disabilities

In 2001, Statistics Canada conducted a large statistical survey on the questions related to disability which is known as the Participation and Activity Limitation Survey (PALS). In 2007 there was the initial release of some information based on PALS 2006 but labour market information is not expected until the fall of 2008.

The figures reported for 2001 were that 815,930 working-age Ontarians (15 to 64 years) had disabilities – or 10.7%. The 2001 figures for the Ontario labour force were 6,785,290.

A brief examination of the statistics illustrates the challenges facing Ontarians with disabilities:

<u>Labour Force Status</u>	<u>Without Disabilities</u>		<u>With Disabilities</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Employed	5,175,290	76.3%	336,120	41.2%
Unemployed	316,430	4.7%	36,270	4.4%
Not in the labour force	1,293,740	19.1%	406,770	49.9%
Not specified	0%	0%	36,780	4.5%

Ontarians with disabilities are woefully under represented in the labour market. In 2007, to acknowledge December 3 – the United Nations International Day for Disabled Persons – the Ontario Federation of Labour developed a poster with the wording suggested by our Persons with Disabilities Committee. The text stated “Decent Jobs Lead to Decent Lives”. Neither of these goals has been reached by Ontarians with Disabilities.

The issue of “mental health” is included in many definitions of disability. For example, Section 2 of the *Accessibility for Ontarians with Disabilities Act* defines disability as:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes, mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”).

Section 2 also notes the following definition of a “barrier”:

“anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”).”

The Ontario Human Rights Commission (OHRC) in a November 28, 2007 document, *Draft for Consultation - Policy on Mental Health Discrimination and Police Record Checks*, notes that Health Canada research indicates that approximately 20% of Canadians will experience mental illness at some point in their lives.

It is likely that mental illness will touch our lives or those of our family and friends. Those numbered in the 20% will find that the stigma of mental illness will hinder their efforts to find that “Decent Jobs Lead to Decent Lives” to quote from the OFL poster.

Background

Under the Ontario Human Rights Code, Ontarians are protected from discrimination in employment based on their “record of offences.” Under the Code, “record of offences” means a record of conviction for an offence for which a pardon has been granted under the *Criminal Records Act* and has not been revoked, or an offence under a provincial law. This means that a person cannot be discriminated against in their job because of pardoned offences under federal law (subject to the exceptions) or for violations of provincial laws such as the *Highway Traffic Act*.

In addition, the Commission states that a police record check and a criminal record check are not entirely the same.

Criminal record checks reveal information about criminal activity. The information is obtained from the Canadian Police Information Centre (CPIC), which is operated by the Royal Canadian Mounted Police. CPIC's database can be accessed by law enforcement agencies and includes information about criminal records, records of having been judged not criminally responsible by reason of mental disorder, pending criminal charges and matters for which someone is on probation. No one (except law enforcement agencies) can access a person's criminal record without that person's consent.

Police record checks are much broader than criminal record checks. They include a criminal record check and a search of the local database maintained by the police service where the person lives. The database maintained by local police forces includes information related to any involvement or contact with the police including: incident reports, charges, convictions, information about the person as a complainant, victim, suspect or witness to an occurrence, including allegations where charges were not laid. Contacts related to the Ontario *Mental Health Act* are also stored, including voluntary and involuntary transfers to medical facilities. A local force may also contact other local police departments in Canada and the United States to obtain information from their databases.

An employer or organization requires an individual's consent to do a criminal or police record check. The information revealed is given directly to the individual being checked or to the employer or organization requesting the search (with the employee's consent).

The issue

For some kinds of employment or activity it is legitimate to seek a criminal record check of applicants. Sometimes organizations go beyond a criminal record check and request police record checks when hiring employees or volunteers. While an organization may wish to use the information as a screening tool, they must have a legitimate reason to ask for such information about potential job applicants. In most cases, it may not actually be a reasonable and a “bona fide” requirement.

As already noted the Commission’s draft policy states that approximately 20% of Canadians will experience mental illness at some point in their lives. This may mean the possibility of non-criminal contact with the police under the provisions of the *Mental Health Act*. The Act authorizes the police to apprehend a person and take him or her to a hospital for examination in circumstances where the person appears to have a mental disorder that will likely result in serious bodily harm to self or to others, or where there appears to be serious physical impairment of the person, or if the person engages in certain behaviour. In many cases, the person, or a family member, may have contacted the police for help.

These contacts are recorded in police databases and may be kept there for years and in some instances they may never be removed. This record could act as a possible barrier when applying for a job, volunteer position, educational opportunity or even housing.

We agree with the Psychiatric Patient Advocate Office that this approach has the effect of “criminalizing” persons with current or a past history of mental illness.

The Ideal Process

A guideline that outlines a clear understandable process is of the outmost importance for Ontarians. Individuals and organizations that request record checks need to understand the possibility of the human rights implications and their obligations under the Code.

The OFL encourages the Commission to make it very clear in their final policy that there could be a negative and discriminatory outcome for Ontarians when organizations are requesting records checks. If a records check is not a legitimate requirement, or if appropriate steps are not taken regarding the information requested, released, or received, there may be grounds for a human rights complaint.