



CANADIAN MENTAL
HEALTH ASSOCIATION, ONTARIO
ASSOCIATION CANADIENNE
POUR LA SANTÉ MENTALE, ONTARIO

Submission to
Honourable Jay C. Hope,
Deputy Minister – Correctional Services,
Ministry of Community Safety and Correctional Services
Accessibility Roundtable

November 24, 2010

Preface

Canadian Mental Health Association (CMHA), Ontario appreciates the opportunity to participate in the Ministry of Community Safety and Correctional Services' (MCSCS) Accessibility Roundtable.

CMHA Ontario is a not-for-profit, charitable organization committed to improving the mental health of all Ontarians. Our vision is "A society that believes mental health is key to well-being." Our mission is to make mental health possible for all. CMHA Ontario is currently working to address the unique needs of individuals with mental illnesses who come into contact with the criminal justice system. As part of our work, we are providing policy support to the Provincial Human Services and Justice Coordinating Committee to help develop its provincial capacity. We have also participated in the *Accessibility for Ontarians with Disabilities Act* (AODA) review process, and have articulated the need to include non-visible disabilities, including mental illnesses, in the AODA standards and regulations.

Introduction

CMHA Ontario commends Deputy Minister Hope and the MCSCS for their commitment to enhancing accessibility for individuals who come into contact with the criminal justice and correctional services systems.

Incarceration can be a double-edged sword for individuals with mental illnesses. On the one hand, research indicates that the correctional culture can aggravate pre-existing mental health conditions, and impede recovery and successful transition back into the community. Yet, the justice system sometimes provides the first point of contact for accessing mental health services that can make a positive difference in the lives of those with mental illnesses.

Individuals living with a mental illness face unique accessibility and human rights issues, and multiple barriers as a result of their illness. They also often fall through the cracks in the health care and justice systems. Under the provisions of the *Mental Health Act*, individuals with a mental illness may be subject to consent and capacity determinations, may be involuntarily detained and may be given treatment without their consent. In the justice system, these individuals are often victimized and face stigma and discrimination due to their illness. MCSCS has the opportunity to protect the rights of individuals with mental illnesses. By increasing access to mental health services, by raising awareness about mental health issues, and by engaging in intersectoral collaboration, MCSCS can ensure that everyone is able to benefit equitably from the programs, policies and practices within the criminal justice and correctional services systems.

In our submission, we will address accessibility issues pertaining to individuals with mental illnesses most relevant to the MCSCS Correctional Services Division; and then identify additional issues for consideration by the Ministry as a whole. We then conclude with three recommendations for increasing accessibility for individuals with mental illnesses who come into contact with the criminal justice and correctional services systems.

Accessibility Issues Relevant to Correctional Services Division

Increased mental health services are needed for mentally disordered offenders

In Canada, there is an ongoing criminalization of individuals with mental disorders. Across the country, correctional facilities are housing large numbers of individuals with mental disorders, including people with severe mental illnesses, addictions, developmental disabilities, acquired brain injuries, fetal alcohol spectrum disorder and other complex mental health conditions. According to the Office of the Correctional Investigator (2009), 39 percent of inmates in Ontario have been diagnosed with a mental illness, have a current medication order in effect, or are receiving ongoing psychiatric evaluation or psychological intervention. Many mentally disordered offenders are being untreated or are receiving limited mental health services and supports.

Individuals with mental disorders who are on remand are also not receiving adequate mental health services and supports. There are more clients on remand in Ontario than convicted clients, and many of these clients have mental illnesses and addictions. Information from the field indicates that psychiatric assessments and other mental health services are not provided to clients on remand until they have been formally charged and sentenced by the court. Without a psychiatric assessment, and without a treatment plan mandated by the court, these clients on remand are not receiving mental health services while they are awaiting their trial date. Across the province, clients, both adults and young offenders, with mental illnesses and addictions on remand are thus being held in correctional facilities without being given adequate assessments, treatments or supports. Changes in provincial policy are necessary to better coordinate mental health services and meet the needs of individuals who come into contact with the correctional services system.

Increasing accessibility for mentally disordered offenders includes addressing attitudinal barriers

The lives of people with mental illnesses are often plagued by stigma as well as discrimination. Stigma is a negative stereotype, and discrimination is the differential treatment that results from that negative stereotype. Violence is often the vehicle through which discrimination is acted out. Evidence from the field indicates that mentally disordered offenders are often being victimized in the correctional services system. In addition, the Office of the Correctional Investigator (2010) reports that incidents of self-harm while in correctional custody are also on the rise. The stigma of mental illness is a significant attitudinal barrier that restricts access to appropriate care for those in need. Furthermore, discrimination based on mental illness also restricts opportunities for people with mental illnesses to fully participate in society. In order to ensure accessibility for mentally disordered offenders, it is necessary to address attitudinal barriers and mental health discrimination within the correctional services system.

Mentally disordered offenders require continuity of care following release from custody

People living with mental illnesses face multiple barriers, including barriers to accessing education, unemployment and poverty. They face limited access and availability of social services and supports, and access to affordable housing. These social inequities are some of the reasons why individuals come into contact with the criminal justice system. Mentally disordered offenders are often labelled “forensic” or “high risk.” These labels often lead to stigma and discrimination for these individuals, as they are often perceived as violent offenders. Recent research from the John Howard Society of Toronto (2010) indicates that while individuals are incarcerated, they often lose access to their housing, income supports and employment opportunities. Mentally disordered offenders are frequently being released from custody into shelters rather than the supportive housing that they require; some are even facing homelessness. Furthermore, information from the field indicates that once they are released, mentally disordered offenders are often being screened out of support services by family physicians, psychiatrists and community support programs. Mentally disordered offenders require a comprehensive discharge plan to ensure that they receive adequate mental health services and supports as well as supportive housing when they are released from custody.

Non-citizen mentally disordered offenders are facing deportation from Canada

Recent research by the Schizophrenia Society of Ontario (2010) has investigated the negative impact of the deportation process upon non-citizens with mental illnesses who come into contact with the criminal justice system. Under the *Canadian Immigration and Refugee Protection Act*, any non-citizen who is convicted of a certain level of offence is inadmissible in Canada on the grounds of criminality. Thus, non-citizens with mental illnesses who come into contact with the justice system can be removed from Canada if they are convicted of a crime, and barred thereafter from returning. Although some mentally disordered offenders are diverted away from the justice system by means of mental health courts or diversion programs, or through the Not Criminally Responsible provisions of the *Criminal Code of Canada*, not all offenders are eligible for mental health diversion. Those who are not diverted can be criminally convicted even if their mental illness played a role in the offence. Current immigration processes do not address the unique needs and challenges of people with mental illnesses. MCSCS Correctional Services Division has jurisdiction over adults being held for immigration hearings and deportation; and as such, Deputy Minister Hope is in a unique position to raise awareness about this issue, and advocate for changes in federal policy to ensure the rights of non-citizen mentally disordered offenders.

Increased support is needed for marginalized populations

Marginalized populations, such as Aboriginal groups, racialized individuals and women deserve unique consideration in the criminal justice and correctional services systems. Individuals with mental illnesses from Aboriginal and racialized communities are often not receiving adequate mental health services and supports, and they lack access to culturally competent care while in custody. Across the country, individuals from Aboriginal and other racialized communities are increasingly coming into contact with the justice system and increasingly being incarcerated. The Office of the Correctional Investigator (2010) reports that, in recent years, the most significant

offender population growth has taken place among Aboriginal peoples, both for men and women. Aboriginal and racialized groups have unique needs and face multiple barriers to accessing the social determinants of health, including income, employment, education and housing. These individuals are also vulnerable to mental health issues as a result of their daily-lived experience of discrimination due to racism. Support from MCSCS is needed to help develop strengths-based approaches to protecting these populations from mental disorders, as well as preventing individuals from coming into contact with the justice system. It is necessary to build community capacity for Aboriginal and racialized communities, and support these communities as partners in promoting health and wellness, social inclusion and equity.

Female offenders also deserve unique consideration while in correctional custody. The Office of the Correctional Investigator (2010) reports that female offenders often come from backgrounds of trauma, including histories of family, domestic, physical and/or sexual abuse. Many women also have mental illnesses and addictions-related conditions, and are more likely to be serving a sentence for a drug-related offence compared to men. Support from MCSCS is needed to increase gender-based mental health services for female mentally disordered offenders.

Accessibility Issues Relevant to MCSCS

Police mental health records pose significant barriers for individuals with mental illnesses

For individuals living with mental illnesses, police mental health records pose a violation to their human rights and their right to privacy. When an individual with a mental illness is detained and apprehended by police under the *Mental Health Act*, it generates an occurrence with the local police services and creates a non-criminal police record. This record is generated even if the individual is merely being escorted to the hospital or emergency room by police, thus creating an unnecessary listing of the individual's interactions with the mental health system. This type of police record contributes to the stigma of mental illness, and often leads to discrimination against individuals with mental illnesses when they are required to obtain a spotless police records check or a "vulnerable sector screening" for the purpose of working or volunteering with a vulnerable population.

Information from the field also indicates that police mental health records in Ontario are in some cases being shared with organizations outside of police services. For example, some individuals have been denied entry into the United States as a result of their police mental health record. This sharing of information is a violation of the right to privacy for individuals with mental illnesses. Law reform is necessary to change these discriminatory practices. As a co-lead for the Mental Health Police Records Check Coalition, CMHA Ontario is currently working to address these issues.

The Ontario Human Rights Commission (2010) has developed an *Interim Guide to Police Records Checks for Vulnerable Sector Screening*. Although this interim guide has been adopted by Toronto Police Services, many other jurisdictions have not yet followed suit. Ontario has multiple jurisdictions that are policed by municipal police, the Ontario Provincial Police and the Royal Canadian Mounted Police. A standardized policy on police mental health records should

be developed that can be used by all jurisdictions regardless of the policing body. As police records falls within the purview of MCSCS, the Ministry has a unique opportunity to change provincial legislation and cease the recording of police encounters with individuals with mental illnesses.

Joint police/mental health initiatives are necessary to support individuals with mental illnesses

To reduce the criminalization of the mentally ill, mentally disordered offenders should be diverted away from correctional institutions and directed into the health care system. Some communities in Ontario have established mental health courts and collaborative police/mental health initiatives [such as Crisis Intervention Team (CIT) officers and Mobile Crisis Intervention Teams (MCITs)] that are steadily working to divert these individuals. Increased support from MCSCS is needed to advocate for standardized mental health diversion programs and mental health courts throughout the province.

CMHA Ontario is also concerned about the use and safety of conducted energy weapons (CEWs), commonly referred to as Tasers. We have developed a policy position paper (2008) on this issue as we are concerned about the propensity of law enforcement officials to deploy Tasers on people experiencing a mental health crisis or demonstrating signs of emotional distress. We recommend that in addition to utilizing CIT officers and MCITs to appropriately respond to mental health crises, police services in Ontario must limit their use of Tasers to situations where the alternative would be use of deadly force. Tasers should only be used as a last resort and after all other de-escalation techniques have proven unsuccessful. Police services should also monitor and publicly report the incidence and outcomes of Taser use. In addition, independent research must be conducted into the safety of Taser use, including the effects on persons experiencing a mental health crisis. Support from MSCSC is needed to regulate the use of Tasers throughout the province to ensure the humane treatment of individuals experiencing a mental health crisis.

Employees also require mental health accommodation

As an employer, MCSCS has a legal obligation to accommodate employees and job applicants with disabilities, including individuals with mental illnesses. The criminal justice and correctional services work environment also poses risks and dangers that may lead to mental health conditions. Correctional officers, police officers and other individuals working in the criminal justice and correctional services systems often face operational stress injuries, which are mental health conditions that result from high-stress work environments such as correctional services, police services or military services. Operational stress injuries include conditions such as anxiety, depression and post-traumatic stress disorder (PTSD).

To ensure accessibility for employees with mental illnesses, it is necessary for MCSCS to take pro-active measures to survey its workplace for barriers, to remove existing barriers and to anticipate and prevent future barriers. Increasing accessibility also includes removing attitudinal barriers. In order to effectively address stigma, stigma reduction initiatives must be customized to the target audience and involve people with lived experience in the development of programming and delivery of training. This has implications for the process organizations need to take to reduce attitudinal barriers that can impact customer service, the work place, information and

communication, and transportation. As an example, Mental Health Works is a program of CMHA Ontario that has been developed to address attitudinal barriers and facilitate accommodation of individuals with mental illnesses in the workplace.

Recommendations for MCSCS

Canadian Mental Health Association, Ontario offers the Ministry of Community Safety and Correctional Services the following recommendations for eliminating barriers to accessibility and protecting the rights of Ontarians with mental illnesses.

- 1. Collaboration is needed in order to protect the rights of individuals with mental illnesses in Ontario.** There are many organizations, both governmental and non-governmental, that are working to address the needs of individuals with mental illnesses. The Provincial Human Services and Justice Coordinating Committee is steadily working to better coordinate services for mentally disordered offenders. The *Accessibility for Ontarians with Disabilities Act* is focusing on creating equitable access to services for individuals with disabilities including mental disorders. The Ontario Ministry of Health and Long-Term Care is working in collaboration with an inter-ministerial group to develop an integrated 10-year Mental Health and Addictions Strategy for the province. MCSCS must work in tandem with existing and new initiatives to provide a coordinated response to the needs of individuals with mental illnesses. A coordinated effort that builds partnerships and engages multiple sectors is needed to ensure that the rights of individuals with mental illnesses are protected in all areas of society. As a non-governmental organization and a key stakeholder in the field of mental health in the province, CMHA Ontario welcomes the opportunity to work in partnership with MCSCS to advocate for the rights of all Ontarians living with a mental illness.
- 2. Cross-sector education and training is needed for criminal justice workers and mental health providers to enhance coordination between justice and mental health services in Ontario.** As part of strengthening the justice and mental health workforce, it is important to educate mental health providers regarding the justice system, and educate the criminal justice and correctional services staff regarding mental health issues and the health care system. Furthermore, diversity and cultural competency training is required to address the unique needs of the growing population of clients from diverse backgrounds who are experiencing mental illnesses and coming into contact with the justice system.
- 3. There is a growing demand for mental health and justice services; however, there are not enough services and supports available in the community to adequately meet the growing demand.** The justice system in Ontario is steadily diverting individuals with mental illnesses away from correctional facilities and into the mental health system. As a result, the number of clients entering the mental health system is increasing. Yet, there are not enough community mental health programs and services to support the growing number of individuals who are being diverted. The demand has far exceeded the services and supports currently available. New resources are needed to increase the capacity of community services and supports for clients with mental illnesses who are involved with the criminal justice and correctional services systems.

CMHA Ontario welcomes the opportunity to collaborate with MCSCS to increase accessibility for individuals who come into contact with the criminal justice and correctional services systems, including individuals with mental illnesses.

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