

## New Psychosocial Disabilities Policy

by Richard Steinecke  
June 2014 - No. 187

Earlier this month the Ontario Human Rights Commission released its Policy on preventing discrimination based on mental health disabilities and addictions. This lengthy document provides comprehensive information about the Commission's interpretation of the disability protections in the *Human Rights Code*. While the emphasis in the Policy is on housing, employment and services, the Policy explicitly recognizes that the same principles apply to professional regulators.

The Policy is not legally binding and, indeed, on a number of points may go beyond what the courts would actually require. However, the Policy provides a guide as to what human rights challenges regulators are likely to face in the near term.

The principles in the Policy have numerous implications for the registration, complaints, discipline and incapacity activities of regulators. Perhaps Chapter 13, on accommodation, will be of most interest. Regulators are already well aware of the need to accommodate persons with disabilities including those with addictions and mental health disabilities. Such accommodations need to be individualized and not based on policies applicable to the entire profession (e.g., random drug screening) or even groups (e.g., a single approach to all members with bi-polar affective illness).

The examples in the Policy of accommodation for employment and services may have application to regulators. For example, the suggestion of "allowing for more training, or training that is delivered in a different way" may arise in a registration context. Similarly, the suggestion that service agencies "[provide] multiple ways of contacting a service including by phone, in person and by regular and electronic mail" may have an impact on regulators moving to universal on-line processes.

The suggestion for "making attendance requirements flexible, where possible, if non-attendance can be shown to be linked to a disability" could affect complaints cautions and disciplinary processes. Similarly, the proposal about "modifying rules around non-compliance with deadlines, if non-compliance can be shown to be linked to a disability" might apply to numerous regulatory activities including renewal deadlines, responding to complaints and compliance with undertakings or terms and conditions.

However, the accommodation mechanism of "considering someone's disability as a mitigating factor when addressing behaviour that would otherwise warrant imposing sanctions" should not be a surprising concept for regulators when applying their complaints and discipline process.

While the Policy states:

In general, the duty to accommodate a disability exists for needs that are known. Organizations and persons responsible for accommodation are not, as a rule, expected to accommodate disabilities they are unaware of.

---

#### FOR MORE INFORMATION

This newsletter is published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation. If you are not receiving a copy and would like one, please contact: Richard Steinecke, Steinecke Maciura LeBlanc, 401 Bay Street, Suite 2308, P.O. Box 23, Toronto, ON M5H 2Y4, Telephone: 416-626-6897  
Facsimile: 416-593-7867, E-Mail: [rsteinecke@sml-law.com](mailto:rsteinecke@sml-law.com)

#### WANT TO REPRINT AN ARTICLE

A number of readers have asked to reprint articles in their own newsletters. Our policy is that readers may reprint an article as long as credit is given to both the newsletter and the firm. Please send us a copy of the issue of the newsletter which contains a reprint from Grey Areas.

# Grey Areas

## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

the Policy does go on to also say:

Where an organization is aware, or reasonably ought to be aware, that there may be a relationship between a disability and someone's job performance, or their abilities to fulfil their duties as a tenant or service user, the organization has a "duty to inquire" into that possible relationship before making a decision that would affect the person adversely.

This proposition may suggest a need for regulators to inquire into possible causes of apparently unusual or bizarre behaviour raised in a complaint about the professional conduct of a practitioner. However, the inquiry needs to be sensitive and appropriate, perhaps worded in terms of whether the member has any accommodation needs that the regulator should be aware of rather than an inquiry about any medical diagnoses.

In fact, in terms of what medical information can be requested, the Policy urges organizations to avoid asking for a medical diagnosis unless that information is absolutely necessary to accommodate the individual. The Policy says:

The type of information that accommodation seekers may generally be expected to provide to support an accommodation includes:

- that the person has a disability or a medical condition
- the limitations or needs associated with the disability
- whether the person can perform the essential duties or requirements of the [position], with

or without accommodation (this is more likely to be relevant in employment)

- the type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the [position] ...

In most incapacity contexts regulators usually believe that they need more information than this to ensure that members can practise safely.

Similarly, the Policy also suggests that it will be rare for organizations to require their own independent health examination of the individual. The Policy also suggests that it will be rare for an organization to require an individual to obtain treatment that the person does not wish to receive in order to continue employment or practise. Regulators can anticipate that this Policy will be cited in incapacity cases in the future.

Chapter 16 of the Policy, dealing with consent and capacity, will also be of interest to regulators. For example, the Policy states:

People acting on behalf of people with psychosocial disabilities (for example, guardians, support workers, substitute decision-makers, *etc.*) also have protection under the *Code*.

This statement suggests that regulators may need to consider whether to provide a role for personal advocates of members with psychosocial disabilities including, perhaps, in the complaints and discipline process.

The Policy can be found at <http://www.ohrc.on.ca>.