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May 27, 2015.

Ontario Human Rights Commission

"Presenting Discrimination Based on Mental Health
Disabilities and Addictions."

>>CART Captioner: Standing by.

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>> Moderator: Good morning, everyone, and welcome to
the Ontario Human Rights Commission's webinar.

This webinar provides an overview of the OHRC's Policy on
preventing discrimination based on mental health disabilities
and addictions.

My name is Dora Nipp, and I'm a Human Rights Education
and Change Specialist with the Commission.

I will be your moderator today.

Let's start with a quick poll ... which will pop up on your
screen shortly.

To submit your answer, just click on the radio buttons, and I'll broadcast the results.

We thought it would be interesting to get a sense of the group and who is taking part today.

Are you attending today as:

An employee, an employer, a service provider, a housing provider, a lawyer or paralegal, student, other, or just for general interest? I'll show you the results in just a few moments.

We've got a really good cross section of people participating, and that's great. And I'm hoping that we'll have some very good discussions.

Now, I'll play a short video that provides instructions on how to use Adobe Connect.

Before we start the discussion, I'd like to go over a few housekeeping items.

First, you'll notice that closed captioning is directly under the main presentation.

You'll also notice a "Full Screen" button at the top-right side of the presentation pod.

You can return your screen to normal size at any time by pressing the "Full Screen" button again.

You should also see two chat pods on your screen; one for

technical help and one for discussion questions -- these pods are what you will use to communicate with us.

When you have a question or comment, please type it into the appropriate pod and your question will appear next to your name.

We ask that you reserve the chat pods for questions and comments about the webinar rather than using it for casual conversation, which can be distracting.

If you experience any technical difficulties, like your audio cutting in and out, it is likely an issue with your server or Adobe Connect's server.

Usually, if you've checked your speaker volume and your own computer, audio issues can be resolved by logging out of the webinar, then logging back in.

If you continue to experience technical difficulties, please write to us in the technical questions pod, and our IT person will try to help.

I'd also like to mention that today's session is being recorded and will be available on the OHRC's website, along with links to further resources. Please note that we cannot provide legal advice, and so, for those types of questions we'll direct you to our policies and guidelines available at www.ohrc.on.ca for more information and steps you can

take.

It's now my pleasure to introduce you to today's presenter,
Cherie Robertson.

Cherie is a Senior Policy Analyst with the Commission.

She develops and drafts public policy on human rights and
social justice issues.

Cherie also delivers public education and undertakes
consultations with stakeholder groups and the broader
public.

Cherie will first discuss the key issues of the Policy on
preventing discrimination based on mental health disabilities
and addictions.

Previous webinar participants have told us that examples are
always helpful.

So during the webinar, we'll discuss a few interactive
scenarios and, following her presentation, Cherie will answer
your questions.

Please use the Q&A pod to submit your answers. Please
also remember that we cannot provide legal advice or give
an opinion on an ongoing in-house complaint or a complaint
with the Tribunal.

>> Cherie: Hello everyone.

Today, I'll give you an overview of the Ontario Human Rights Commission's Policy on preventing discrimination based on mental health disabilities and addictions.

I'll cover key parts of the policy, and there will be time at the end for questions and answers.

I'll start with a short background to the policy.

From 2009-2011, the Ontario Human Rights Commission held a province-wide consultation.

Over 1,500 individuals and groups took part, including people with mental health issues or addictions, employers, service providers, housing providers, advocates, families and others.

Based on these consultations, the Ontario Human Rights Commission prepared a consultation report entitled "Minds that Matter."

In it, we committed to developing a policy on mental health and addictions.

In 2014, the OHRC released its Policy on Preventing Discrimination Based on Mental Health Disabilities and Addictions.

The Policy sets out how the Ontario Human Rights Code, known as "the Code" applies to mental health and addictions

issues, and it provides many practical examples. Barriers exist across society and our policy focuses on employment, housing and services.

Ableism, negative attitudes, stereotypes and stigma can create barriers in society.

These attitudes can lead to inaccurate assessments of people's personal characteristics.

And, in turn, may lead to policies, procedures and decision-making practices that exclude or marginalize people with mental health disabilities and addictions.

Stereotypes related to violence persist even though studies show that most people with mental health disabilities are no more likely to engage in violent behavior than the general population. In fact, research shows that people with serious mental illnesses are more likely to be victims of violence themselves, than other members of the general population.

People with mental health issues are often seen as child-like, and in need of help, even when this is not the case.

They are viewed as not having the capacity to make decisions in their own best interests.

Extreme stigma around certain types of mental health

disabilities and addictions may make people afraid to disclose their disability. For example, in our consultation, we heard about a librarian who was so afraid to ask for accommodation for her mental health disability that she chose to quit her job instead. Fear of discrimination can also result in people not seeking support for a mental health issue or addiction. The Policy states clearly that ableism, negative attitudes, stereotypes and stigma that result in discrimination, violate the Code.

The Policy sets out the legal framework of protections for people with mental health disabilities and addictions.

It goes through the rights and responsibilities set out under the Ontario Human Rights Code.

It points out the impact of the Charter of Rights and Freedoms, the Accessibility for Ontarians with Disabilities Act, and the United Nations' Convention on the Rights of Persons with Disabilities.

The Policy then goes on to discuss intersecting grounds, inclusive design and forms of discrimination based on mental health and addiction. Intersectional discrimination occurs when discrimination is based on two or more code grounds, which results in a unique or distinct experience of

discrimination. Intersectional discrimination recognizes that people's lives involve multiple, interrelated identities and sometimes people may be marginalized and excluded based on how their identities intersect.

For example, in our consultation, we heard that young African-Canadian men with a mental health issue may face specific barriers when renting housing because of intersecting stereotypes about sex, age, race, and disability. People with mental health and addiction disabilities are also more likely to have low incomes and many live in chronic poverty.

The Policy also looks at the importance of designing society and structures with the needs of people with mental health and addiction disabilities in mind. For environments that are free from discrimination and harassment, organizations must take steps to design programs, policies, and environments inclusively. This means taking into account the needs of people from diverse backgrounds who have a range of unique identities.

Here's an example. A hospital emergency department has a list of language interpreters who are available by telephone.

This means more efficient service to people whose first

language is not English and who may need attention for a mental health disability.

Discrimination based on mental health and addictions can appear in different forms. Direct discrimination happens when individuals or organizations specifically exclude people because they have a mental health disability or an addiction. For example, an employer fires a woman after learning she has depression because he doesn't think she can do the job.

Indirect discrimination is carried out through another person or organization. For example, an employer that uses an agency for employment recruitment tells the agency to screen out anyone whose work history indicates that they have, or have had, mental health issues.

Discrimination against people with mental health disabilities or addictions is often subtle. Generally, people will not freely voice stereotypical views about people with mental health disabilities or addictions as a rationale for their behavior. Sometimes rules, standards, policies, practices, or requirements that seem neutral have an adverse effect on people with mental health and addiction disabilities. An example is an employer that won't hire anyone who has a

gap in their employment history. This could have a negative effect on people whose mental health or addiction disabilities have temporarily kept them out of the workforce.

Discrimination may also include profiling.

Profiling is based on preconceived ideas about a person's character.

People who have, or are perceived to have, mental health or addiction issues are sometimes treated as a risk to public security and safety even where there is no evidence to support this perception.

Harassment. Discrimination also includes harassment based on a mental health or addiction disability.

Harassment can happen at work, in housing or when receiving different types of services.

Poisoned environment. The Policy also talks about poisoned environments and systemic discrimination.

And it talks about Reprisal. It's important to note that the Code protects people if they experience reprisal or threats of reprisal.

A reprisal is an action, or threat, that is intended as retaliation, punishment or "payback" for claiming or enforcing

a right under the Code. This would mean that someone could not be punished by their employer, for example, for raising the issue of human rights, or attempting to enforce their human rights in the workplace.

Even programs, laws and policies that target, serve or benefit people with mental health disabilities or addictions, may be under-inclusive or engage in questionable human rights practices.

For example, the Ontario Disability Support Program, known as ODSP, was successfully challenged in court because it specifically excluded people with drug and alcohol addictions.

The Ontario Court of Appeal found that it is well known that people with addictions and welfare recipients are subject to stigma and prejudice, and that there was no obvious explanation for why this group was not eligible for benefits under the legislation.

Measures that apply distinctly to people with mental health and addiction disabilities must ensure equality, respond to people's individualized needs and uphold people's dignity. They should never be used as a way to continue inequality, segregation or exploitation.

>> Dora: At this point in the presentation, we're going to introduce you to a scenario.

The purpose of this exercise is to spark a discussion, so I encourage you to participate.

You can type your answers and comments in the discussion pod which is just below the presentation screen.

Okay. Let's go through the scenario together.

You are a landlord. You have a tenant who told you she is in the hospital due to a mental health issue and won't be able to make her rent payment on time.

Okay. Let's discuss, and we'll go through each one of the discussion questions.

The first question:

What obligations do you think you have to accommodate or support the tenant?

You can type your answers -- do you see the question under the -- in the discussion pod?

You can type your answers in the discussion pod.

Great. We have one response. To give allowance to the tenant to make payment even if she's late, without penalty.

Confirm that she's actually in the hospital.

Landlord can't punish for non-payment of. Mm hmm.

Okay. Just going through...

Give allowance to make payment. I believe the -- sorry, I have to screen down. Give them more time to make the payment.

Okay. Have the support -- to give your support to the point of undue hardship. Mm hmm.

Okay. Let's move on to the next question.

Question two:

What type of questions can you ask a tenant who has a mental health issue?

How can I accommodate you?

Okay.

How might I support you?

What type of support do you need?

Can't ask anything about health issues unless it's been disclosed.

Or, I don't believe that we are allowed to ask.

Okay. Let's go on to one last question.

It's question three.

What steps could you take to meet the needs of the tenant and also ensure that you will get your rent payment?

Have a solid tenancy agreement.

Set out a payment plan.

Normalize pre-pay by check or auto withdrawal.

Work together on a payment plan.

Mm hmm.

Auto deposit.

And negotiate a clear timeline with assistance from a healthcare professional, if needed.

Document requests.

Offer assistance with drawing up a plan.

Okay. All right. Just a few comments.

The landlord has a duty to accommodate the tenant to the point of undue hardship. This may mean being flexible about when the rent is received, particularly if it's a one-off occurrence. Knowing that the person is in hospital, you may not need confirmation that the tenant has a disability, but you can ask for information to indicate that the need is temporary in nature and that the tenant will be able to pay the rent once released in a few weeks' time.

The person provides the information, and you can make an

allowance for the late payment. And that was a comment that a couple of you made.

When more information about a person's disability is needed, the information requested must be the least intrusive of the person's privacy while still giving the accommodation provider information to make the accommodation.

Great. Your comments were great. Thank you for participating in this scenario.

Now we'll continue with Cherie's presentation.

>> Cherie: The Policy talks about the duty to accommodate people with mental health disabilities and addictions under the Ontario Human Rights Code. There are three principles of accommodation, and these are: One, respect for dignity; two, individualization; and, three, integration and full participation.

The Policy sets out the duties and the responsibilities in the accommodation process. A person making an accommodation request should be making their needs known to the best of their ability, taking part in the accommodation process, and answering relevant questions

about restrictions and limitations. It also talks about the responsibilities of organizations. An organization should: Accept an accommodation request in good faith unless there are legitimate reasons for acting otherwise; take an active role throughout the process; and get expert advice when it's needed.

The OHRC has been asked about the kind of information an organization can ask for from a person who has a mental health issue or addiction and is requesting accommodation. Asking about medical information has implications for the privacy of employees, tenants, and service users. Yet, at the same time, organizations must have enough information to meet their duty to accommodate.

The Policy states that a person requesting accommodation is generally expected to provide information to show that the person has a disability or a medical condition and that outlines the limitations or needs associated with the disability. Where more information is required, questions must be the least intrusive of the person's privacy while still giving the accommodation provider enough information to make the accommodation.

>> Dora: Let's discuss another scenario.

You are an employer. One of your new police constables was involved in a traumatic incident and started experiencing symptoms of post traumatic stress disorder, PTSD. His symptoms led to a second incident in which he overreacted to a patron at a restaurant whom he incorrectly perceived to be a threat. He acted in a way that led his supervisors to believe he could be experiencing PTSD. His job performance was slipping, and his behavior was often inappropriate.

Let's start discussing. Again, you can type your answers to the questions in the pod located just below the presentation screen.

Oh, sorry. Carolyn – oh, it's been enlarged, so it's just right in front of you.

Here's our first discussion question.

The constable has not asked for any accommodation and has not mentioned his work performance or behavior. What do you think his supervisors should do?

There's a duty to inquire.

Who knew or ought to have known the obligation is triggered.

Request a sit down with the constable.

Perhaps bring this up in a discussion.

Mm hmm.

Provider review, suggest assistance, perhaps remove the constable from the situation.

Okay. Let's go on to the next question.

Do you think he should lose his job because he can no longer perform his duties?

Unanimous, no. It seems like it's no all around.

Okay. So that was a very fast response.

This scenario is actually based on a real case. The constable was not accommodated. He was not offered assistance or time off. Instead, he was eventually fired for misconduct.

Cherie, do you have anything else to add?

>> Cherie: Good morning, everybody. As Dora mentioned, this is based on a real case in which the Human Rights Tribunal of Ontario ruled that the police services actions were discriminatory and affirmed that an employer has both a procedural and a substantive duty to accommodate a person's mental health disability, even when that person isn't capable of recognizing that they have a disability or

expressing that they need help or accommodation.

Where an employer is aware, or reasonably ought to be aware, that there may be a relationship between a disability and someone's job performance, the employer has a duty to inquire into that possible relationship before making a decision that would affect the person negatively. This includes providing a meaningful opportunity to the employee to identify a mental health disability or addiction as the reason for the inappropriate behavior and give them an opportunity to request accommodation. A severe change in a person's behavior could signal that the situation warrants further examination.

The employer has the duty to accommodate the constable to the point of undue hardship. With accommodation, the police officer may be able to do his original job. If he can't do his original job, even with accommodation, he may be able to perform alternative work for his employer. An employer shouldn't rush to the conclusion that a mental health disability prevents a person from performing their duties.

>> Dora: Thanks, Cherie. Let's continue with the

presentation.

>> Cherie: In general, the duty to accommodate a disability exists for needs that are known.

Accommodation providers are not, as a rule, expected to accommodate disabilities that they don't know about.

Sometimes, however, the nature of mental health or addiction disability may leave people unable to identify that they have a disability, or that they have accommodation needs.

People may not want to disclose their disabilities, because of the considerable stigma surrounding mental health disability and addictions.

Accommodation providers must try to help a person who is clearly unwell or perceived to have a mental health disability or addiction by inquiring further to see if the person has needs related to a disability and by offering assistance and accommodation. This must be done before imposing discipline on a person.

Under The Code, mental health and addiction disabilities must be accommodated to the point of undue hardship,

which is a very high standard. The Code sets out only three factors that may be considered when assessing whether there is “undue hardship.”

They are cost; outside sources of funding, if any; and health and safety requirements, if any.

Let me explain. Cost involves the expense to the organization to make the accommodation. To meet the undue hardship standard based on costs, the costs must be so high that it affects the viability of the organization such as impairing the operation of the business. Outside sources of funding is funding that is available to help offset the cost of the accommodation, and significant health and safety risks may also cause undue hardship.

The Code recognizes that the right to be free from discrimination must be balanced with health and safety considerations. Organizations should not jump to the conclusion that a person poses a risk without objective evidence. And it's important to consider the dignity of the person when addressing health and safety risks. Even where people are correctly assessed to pose a risk, organizations should apply a proportionate response. If a real risk exists, the least intrusive means to address the risk

must be used.

The Policy states that a high probability of substantial harm to anyone will amount to undue hardship.

Most often it will not cost much to accommodate someone's mental health issue or addiction. Accommodation may simply mean making policies and rules and requirements more flexible.

The Policy recognizes that the power to make decisions about matters that affect one's own life, and to have them respected by law, is a fundamental part of realizing one's right as an independent adult. Capacity issues can affect a person's ability to make decisions about getting married, managing property, personal care, healthcare, whether to receive treatment, consenting to go to a long-term care facility, instructing counsel, et cetera.

People with mental health and addictions disabilities who lack capacity are often highly vulnerable to mistreatment.

The Policy states that organizations and institutions dealing with people with mental health and addiction disabilities should recognize that people who lack capacity may be more at risk for exposure to exploitation and abuse,

particularly if they are isolated from social supports, do not know their rights, or have people acting on their behalf who are in a conflict of interest.

Ontario has legislation that deals with aspects of decision-making and mental capacity.

It's important to note that the Code has primacy over other provincial legislation, which means that these pieces of legislation must have regard for the Code and Human Rights principles.

The Policy states that employers, and those providing housing and services, have the ultimate responsibility for maintaining an environment free from discrimination and harassment. It is not acceptable to choose to stay unaware of discrimination or harassment of a person with a mental health disability or addiction whether or not a Human Rights claim has been made. The section on preventing and responding to discrimination sets out concrete steps that organizations can take to ensure that they are acting in accordance with Human Rights principles.

These steps include: preventing, reviewing, and removing barriers; data collection and monitoring; developing Human Rights policies and procedures; and providing education and

training.

To conclude, the OHRC's policy is intended to provide clear, user-friendly guidance on how to assess, resolve, and prevent human rights matters related to mental health and addiction disabilities.

All of society benefits when people with mental health and addiction disabilities are given equal opportunity to take part at all levels.

>> Dora: Thank you, Cherie.

We're now going to start the question and answer segment of the webinar.

You can ask your questions in the Q&A Pod.

Remember that we cannot provide legal advice. If you have a Human Rights complaint, you may want to consult with the Human Rights Legal Support Centre. If you have a complaint filed against you, and you are -- for example -- an employer or a service provider, you may wish to consult with your own legal counsel. During the questions and answers, we may pause, and there may be silence on our end. This is because we may need a few moments to consider the question.

I'll start with a couple of questions that frequently arise during public-education sessions with the Policy.

While Cherie and I are discussing these questions, if you have a question, please enter it in the discussion questions pod.

Let's begin.

Cherie, how can people who think they are discriminated against use the Policy?

>> Cherie: Well, Dora, the Policy was written with multiple audiences in mind.

People with mental health or addiction disabilities themselves may find the Policy very helpful for understanding their own rights under the Human Rights Code. It may also help them to advocate for themselves in situations when they think they're being discriminated against. Employers, service providers and housing providers may find it helpful to explain their own obligations under the Code, and in it they can find best practice examples on how to provide an environment free from discrimination and harassment.

And advocates such as, lawyers, families, or disability organizations who work with or on behalf of people with

mental health or addiction disabilities can use the Policy to show where the Code applies either at the Human Rights Tribunal of Ontario or in other contexts.

For example, the Code says that the Human Rights Tribunal may consider a policy approved by the Ontario Human Rights Commission at a Human Rights proceeding and where a party or intervenor requests it, an adjudicator shall consider a policy.

In addition, the OHRC has shorter brochures that describe aspects of our Policy, and these are all available on our website.

>> Dora: Okay. Now the questions are starting to pop up. I think while we're waiting for more questions to come forward, I'm just going to ask another frequently asked question, or do you want to just take the questions?

All right.

One other question that we've often received at our sessions is, why a policy on mental health and addictions and not on similar disabilities such as developmental or intellectual disabilities?

>> Cherie: So the Ontario Human Rights Commission chose

to focus on mental health disability or addictions is because of the issues that these people face. People often face stereotypes that they pose a risk to other people, and even that they are responsible for their own disabilities. People are subject to unique laws that may restrict their rights and freedoms if they experience difficulty with decision-making or it's determined that they need psychiatric institutionalization.

People with mental health and addiction disabilities are disproportionately represented among people with low incomes. So because of these and other factors, people may experience significant barriers in housing, employment, and services.

And at the same time, the information in this Policy may apply to discrimination based on other types of disabilities.

So, Dora, I'm seeing a lot of really great questions coming in.

So a question from Julia Anderson.

Are you able to expand further on an employer's obligation to accommodate when accommodation is refused and mental health issues are denied?

So this is a really great question. And we know that it arises, in many different contexts, including the workplace.

So we've talked a little bit about the duty to inquire, and the obligation of an employer to ask those questions that many of you identified earlier such as, what can I do to support you, and what can I do to help you succeed at work?

So this is part of the procedural duty to accommodate. Is to ensure as an employer you are documenting all the steps you take to provide an opportunity for an employee to indicate that they may be having difficulties that are related to a Code ground.

So to go through these steps is really important, and we always recommend that there be written documentation of all the steps taken.

But what happens when, after going through all of these steps an employee continues to deny there's, in fact, anything wrong?

Even though their behavior may seem to indicate otherwise?

And so we do find situations, and some of these have been litigated, where if a person refuses to participate in the accommodation process, despite the employer's best efforts to make it a welcoming environment, to do that, ultimately if the person is in denial about the condition that they may have, or if they refuse to cooperate or participate in the accommodation process, it can be that after taking these good-faith efforts the employer's obligation may come to an

end. Because it is necessary, in the accommodation process, that the person who needs the accommodation, or is requesting the accommodation, that they participate throughout the process and that they do their best to identify what their needs are.

Sometimes this is going to be complicated. Sometimes an outside expert's advice and support might be needed in order to help the person through it. But, ultimately, a person has to participate in their own accommodation process.

So, Dora, I see a lot – a lot of questions coming in.

So we have a question -- from Ian G. Wilkinson. How can a housing provider give protection to one tenant from another's harassment?

So, again, a very real-life difficult example, which we have heard about not only in our mental health consultation but when we did our housing policy. So sometimes you'll find situations where people are living communally or close together in close quarters, where it seems that there can be situations that may amount to what we call "competing rights."

Where, for example, people with mental health disabilities have the right to accommodation under the Human Rights

Code, but other tenants also have rights. They have the right to reasonable enjoyment of their premises, and how does a landlord navigate these types of complicated scenarios?

So we have talked about these types of issues in the Policy. And if it's possible, we recommend that the landlord have a sit-down with both parties and try to identify where the rights might be competing, making it clear to other tenants that the landlord, as a housing provider operating in the Province of Ontario, has Human Rights obligations to accommodate a person with a mental health disability, but there may be accommodations that can mitigate the behavior that's causing other tenants difficulties or is affecting the overall housing environment in a negative way.

So, for example, if a person's disability is resulting in them causing a lot of noise or undue disturbance, there can be things that landlords can do, such as additional soundproofing, which is not necessarily that costly and can make for a much more harmonious living arrangement with people who are sharing the same space.

There are other suggestions that we include in the Policy for housing providers, and we give a number of different housing related examples, so I would urge those of you who

are interested to consult the Policy further.

So we've got tons of questions coming in, which is just great.

And so I am just trying to figure out here what we can...

Okay.

So I'll just -- Carolyn M. has asked the question. Many individuals begin to experience mental health and addiction disabilities in high school or earlier, what, if anything, is being done to educate individuals on their rights and how to advocate, as in the Code, for continuation into further education services, employment, and housing?

Okay. That's another great question. And part of the Ontario Human Rights Commission's mandate is to provide public education to a variety of different organizations and sectors throughout society. We have a number of different partnerships with the education sector at various different levels, and part of that work involves raising public awareness of what people's rights are under the Human Rights Code.

Certainly we know from our research that the age window between 18 and 25 is often the most common time for people to discover, for the first time, that they may, in fact, have a mental health disability that requires attention.

So oftentimes, students, either in high school, or even in post-secondary school, in particular, will be discovering this part of themselves for the first time, and this has implications for how they receive educational services. So we've done a lot of work with post secondary institutions and some work with primary and secondary educational institutions about the kinds of supports that students with disabilities often require in order to be able to access educational services in a way that doesn't -- that doesn't impinge upon their quality rights in The Code. There's so much I can say about this, but I would definitely recommend that people take a closer look at the Policy.

And in addition to that, we also put out a document called "The Guidelines on Accessible Education" which is education specific and talks about the accommodation of students with disabilities of all kinds, in all different educational settings, ranging from primary level all the way up to post-secondary.

Okay. So Tara Gallagher has asked the question. So can you please speak more to the meaningful dialogue, duty to inquire piece identified in the scenario regarding the police officer? Is there any documentation from the Commission on this to balance out an employee's right to privacy, dignity,

et cetera?

Yes. So we have an entire section in our policy entitled "The Duty to Inquire," and this talks -- this is based on case law, cases that have been decided in which it was held that mainly in the context of employment, employers have the responsibility to ask those sensitive questions that can allow a person to feel that they are -- they are safe to disclose that they have a disability-related need and that the employer has support services in place to help them and that the employer recognizes their own obligations under the Human Rights Code.

So, clearly, this is going to have a lot of implications for the workplace at large. It will also have implications for the privacy of employees. And we talk at length in that section about the kinds of questions that could be asked and some direction in how to ask those questions and how to balance the competing interests that are often at play when somebody is experiencing difficulties in the workplace and may not have an awareness of what their own needs are, or, in any event, has not declared to the employer that they have a disability-related need.

>> Dora: Cherie, we've often received questions about the

kinds of medical information an accommodation provider is entitled to when they're arranging for an accommodation.

Can you comment on that, please?

>> Cherie: So, yeah. The person seeking accommodation is generally required to advise the accommodation provider -- so the employer, housing provider, or service provider -- that they have a disability, and the accommodation provider is required to take these requests for accommodation in good faith, unless there's some reason to question the legitimacy of the request.

And the type of information that accommodation seekers may generally be expected to provide to support an accommodation request would include things like the person has a disability or a medical condition; and what the limitations or the needs associated with that disability are; whether they can perform the essential duties or requirements of their job of being a tenant or of being a service user, with or without accommodation; the type of accommodation that may be needed to allow the person to fulfill the essential duties or requirements of the job or of being a tenant or of being a service user, for example.

In employment, regular updates about when the person expects to come back to work, if they're on leave, can be really helpful to the employer in allowing them to structure their workplace. But we do talk about -- in the Policy at length -- about the fact that accommodation providers don't have the right to know a person's confidential medical information such as, the cause of the disability, the diagnosis, or the symptoms, or the treatment that they're receiving unless these clearly relate to the accommodation being provided.

Or, and there are a few different exceptions that have come out of the case law, where the person's needs are complex, challenging, or unclear, sometimes more information is needed, maybe up to and including a diagnosis. But these will be rare situations and the person may be asked to cooperate by providing more information. In such situations, the accommodation provider must be able to clearly justify why this information is needed. But we do say very clearly in the Policy that wherever possible, an accommodation provider must make genuine efforts to provide needed accommodations without requiring a person to disclose a diagnosis or otherwise provide medical information that is not absolutely necessary.

>> Dora: And, Cherie, what about an employee who is job hunting and doesn't want to disclose anything until after they're hired?

>> Cherie: So under the Human Rights Code, employees that are applying for employment don't have an obligation to disclose code-related grounds in a job interview, and there's been case law on this. So really it's up to the employee to decide how to handle it, but there is no legal obligation on them to disclose anything about their identity that has a relationship to code grounds.

>> Dora: And going back to the duty to inquire. We have a question here about whether or not the duty to inquire extends beyond employment to educational spaces?

>> Cherie: Yeah. So the principles that we talk about -- many of the legal principles -- are coming out of employment because that is where the bulk of litigation has happened and continues to happen. But the principles that we talk about in the Policy will apply to any of the social areas under the Human Rights Code. So this includes: any type of service, including educational services; housing. So the

principles that we speak about, while they often do arise in the workplace, they would apply to other social areas covered by the Code, including colleges and universities and other educational institutions.

So we're just looking at some of the earlier questions that we might have missed. And just bear with us. They're coming in really quickly.

So, [Name?] -- I'm sorry if I'm mispronouncing your name -- has asked a question. What if an employee tells the employer her doctor wants her to take time off because she's hypertensive, but staff says she doesn't want to take time off right now?

Okay, so, I mean, as with any medical condition -- I'm not sure how the employer would know that unless the employee brought that medical advice to the employer's attention, so I'm not entirely sure that I understand that question.

I mean, I think that just to answer it to the best of my ability -- the accommodation process is always assisted and informed by advice from outside professionals including a person's own doctor, whether the person is in disagreement about what the medical treatment has recommended. I mean, this raises broader issues around whether a person is required to

obtain treatment, and the kind of treatment that they may decide to receive or not, and we do talk in the Policy at length about treatment and the right of a person to decide their own treatment, and I think that question is getting into some of the information in the Policy along those lines.

We have another question here from Kristin [name?], I believe.

Does the Policy address medical from employees? I often hear that employers are dismissing medical requests as being too vague or no diagnosis.

So in our Policy we have a section on medical information to be provided, because this is something that causes a lot of confusion out there. We know that. We heard quite a bit about it in our consultation.

So we encourage doctors to be as informative as they can be while also respecting a person's right to privacy.

So as I mentioned earlier, there is no right of employers, housing providers, or service providers to a diagnosis.

Generally speaking, the accommodation can be provided if the employer, for example, has a good sense of what the needs and limitations associated with the disability are. The diagnosis can lead to a lot of stigmatization, particularly in

the case of specific diagnoses, which we know do carry a lot of stigma. And it has been our experience, for sure, that the accommodation can be provided in a meaningful and effective way as long as the limitations and the needs are clearly set out.

If an employer is faced with a situation where they get a vague medical note from an employee's doctor, they are entitled to ask for more information, if they need more information. We've been working with educators in the post-secondary context to try to develop forms for physicians that are providing medical notes for students to assist them in what kind of information helps, in that context, educational institutions to make accommodations without being intrusive or asking for information that interferes or impinges upon the privacy of the person making the accommodation request.

So related to that Tatiana [name?] has asked the question.

Does a student with a mental illness/disability need to disclose the nature of his or her condition in order to obtain support, accommodation, at college/university?

And so this goes back to what I've just been talking about.

Where a student at college or university is making an accommodation request, typically, they will be working with

the offices for students with disabilities that exist at colleges and universities, and they need to do the best that they can to outline the needs and limitations associated with their disability. They're not obliged to disclose a diagnosis or the nature of their condition, which is akin to a diagnosis. They may decide -- so we recognize that students often have very trusting relationships with the staff in offices for students with disabilities, and they may decide to offer that information along the lines of a diagnosis, but they're not obliged to do so.

Where they do give this information, they make it really clear to these offices that they have an obligation to maintain that student's confidentiality and privacy. And it's ideal if they have an institutional policy on the steps that they will take to make sure that the information is kept in a confidential and secure place and that it's only shared with a person who has an absolute need to know, so that would generally not be faculty.

So I've got a question -- I'm just looking here on the screen. From [name?] regarding the drug addiction aspect of disability discrimination and the Policy's goals to identify, duty to inquire and accommodate -- I'm assuming that's the

tribunal -- has the HRTO found that -- or I don't know if it's the Commission, in fact. Anyway -- has the -- either the Commission or the Tribunal found that a different approach to dealing with drug addiction issues -- having dealt with folks in both sectors, I found there are different characteristics and thus different approaches that must be engaged in. Is this something -- I'm going to think that's the Commission -- right, Dora?

>> Dora: Mm hmm.

>> Cherie: Is this something the Commission has recognized and addressed at this point?

So we make it really clear in the Policy, and this again is coming out of the case law, that addiction is a form of disability.

So anything that we say in the Policy about the accommodation of disability, including mental health disabilities would apply in the same way to addictions issues.

And we know that addiction issues raise their own unique considerations, and we have tried throughout the Policy to highlight numerous different examples in different contexts that deal with addiction disabilities and talk about some of the unique challenges that people who are working with

people who have addiction issues are faced with and how they might deal with those.

>> Dora: Cherie, on the issue of consenting to treatment, it's highly important to many people with mental health disabilities and addictions. Can you comment on the OHRC's position on this issue?

>> Cherie: So as I briefly touched upon earlier, seeking treatment, such as medication or therapy, is a really personal issue and it speaks to the fundamental rights of people to decide what to do with their own bodies. All capable adults have the right to consent or refuse to consent to treatment.

Employers, housing providers, and service providers should be aware that it may be a violation of a person's human rights to impose blanket conditions or requirements to get treatment, to get a particular kind of treatment. For example, take a certain kind of medication, or see a psychiatrist. It can also be a problem to impose blanket conditions or requirements to monitor someone's treatment as a part of -- or as a condition of getting or maintaining housing, services, or employment, where this isn't a bona fide or legitimate requirement of taking part in the organization.

So if the employer, for example, is trying to make an argument that they're entitled to require someone to get treatment or get a particular kind of treatment or to monitor that person's treatment, the onus will be on the employer to make out the case that this is a BFR, or a bona fide requirement. There's a specific test in the law that an employer or a service provider, housing provider, et cetera would have to meet to show that imposing a requirement that would otherwise amount to discrimination is justified because it's a bona fide requirement.

The Policy goes into this legal test in much more greater detail. So that's what I will say about it at this point.

But having said this, a person's refusal to get treatment, where the requirement to take part in treatment is reasonable and bona fide, may affect an organization's ability to provide appropriate accommodation, and it may interfere with the person's ability to perform the essential duties of the job, or the essential requirements attending the exercise of the right.

So for more information about this very important topic, I would refer you to the section in the Policy that deals

specifically with treatment.

>> Dora: And, Cherie, a quick question. What obligations would an employer have to provide and fund treatment for employees, say with addictions?

>> Cherie: This is a really complicated question. I mean, employers are required to provide accommodation. This is quite distinct and different from providing treatment. I see though that we are – we've run out of time.

So I would just refer -- I think it's Bruce Parsons who asked that question -- I would refer you to the section in the Policy on treatment, which makes it really clear what an employer's obligations are and what they are not.

>> Dora: Thanks, Cherie, for sharing your expertise, and thank you everyone for your questions.

That's about all the time that we have now.

Before you go though, we have a few other things to mention.

You can now see a survey and web links pod on your screen. It includes a link to a short 5-minute survey and all of the related resources.

We'd very much appreciate it if you could give us feedback

on the survey -- feedback through the survey.

And to access the links, click on the title and then click the "Browse To" button.

Today's webinar will be made available on our website very shortly, probably by tomorrow, at ohrc.on.ca.

You can share the recording with your colleagues, and you can also access it anytime yourself.

If you'd like to continue the discussion online, you can follow us on social media at [facebook.com/the.ohrc](https://www.facebook.com/the.ohrc) or tweet at us using the hashtag [@Onthumanrights](https://twitter.com/Onthumanrights).

I'll leave the webinar up for a few more minutes so that we can -- you can have time to fill out our survey and to access the resources.

Thank you very much for joining us. Thanks again to Cherie.

And we look forward to receiving your feedback over the next few days.

And have a good rest of the day, everyone.