

REPORT

WITH LEARNING IN MIND

Inquiry report on systemic barriers to academic accommodation for post-secondary students with mental health disabilities



**Ontario
Human Rights Commission**
**Commission ontarienne des
droits de la personne**

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Note: While this inquiry was underway, the name of the ministry responsible for colleges and universities was changed from the Ministry of Training, Colleges and Universities to the Ministry of Advanced Education and Skills Development. In this report, the original name (Training, Colleges and Universities) is used to reflect the name used in inquiry correspondence.



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Introduction and background

In 2016, the Ontario Human Rights Commission (OHRC) wrote to public colleges and universities in Ontario asking them to implement six specific measures to reduce systemic barriers to post-secondary education for students with mental health disabilities. This report describes the systemic barriers identified by the OHRC, the modifications to post-secondary institutions' policies and procedures requested by the OHRC, and the institutions' self-reported progress in implementing the requested changes.

Academic accommodations and systemic barriers

Employment and Social Development Canada projects that two-thirds of job openings from 2011-2020 will be in occupations that generally require post-secondary education (college, university or vocational) or management occupations.¹ At the same time, people with mental health disabilities face several challenges in post-secondary settings. Almost a quarter of people in Ontario with mental health and addiction disabilities have discontinued their formal education or training because of their condition (24.1%).² This is more than three times higher than the proportion of people with other disabilities who have discontinued their education because of their condition (6.4%).³ The proportion of Ontarians without disabilities with a university degree (24.8%) is more than twice that of people with mental health and addiction disabilities (8.5%) or people with other disabilities (10.9%).⁴ Ontarians with mental health and addiction disabilities are four times more likely to earn a college diploma or trade certificate (33.9%) than complete university (8.5%).⁵

The Ontario *Human Rights Code* (the *Code*) guarantees the right to equal treatment in education, without discrimination based on disability. Academic accommodations are a fundamental aspect of ensuring equal access to education for students with disabilities. Education providers have a duty to accommodate students with

¹ Ontario Human Rights Commission, *By the Numbers: A statistical profile of people with mental health and addiction disabilities in Ontario* (2015), online: www.ohrc.on.ca/en/numbers-statistical-profile-people-mental-health-and-addiction-disabilities-ontario (*By the Numbers*) citing Employment and Social Development Canada, *Canadian Occupational Projection System (COPS): Graph Descriptions of Imbalances*, online: <http://occupations.esdc.gc.ca/sppc-cops/c.4nt.2nt@-eng.jsp?cid=37>.

² *By the Numbers*, *ibid* at 35.

³ *By the Numbers*, *ibid* at 35.

⁴ *By the Numbers*, *ibid* at 34.

⁵ *By the Numbers*, *ibid* at 35.

disabilities up to the point of undue hardship. This duty to accommodate includes both procedural and substantive obligations. Organizational policies, procedures and practices must satisfy both of these components.

In recent years, post-secondary institutions have received unprecedented numbers of requests to accommodate disabilities and have worked hard to make their services accessible to, and better accommodate, increasing numbers of students with mental health disabilities. Nonetheless, systemic barriers to accommodating post-secondary students with mental health disabilities persist.

A 2012 OHRC report entitled *Minds that Matter: Report on the consultation on human rights, mental health and addictions (Minds that Matter)* outlined findings from the OHRC's province-wide consultation with more than 1,500 individuals and organizations on the human rights issues experienced by people with mental health disabilities or addictions. Submissions about post-secondary education focused on the duty of post-secondary institutions to accommodate students with disabilities to the point of undue hardship, and highlighted barriers faced by students with mental health disabilities in post-secondary education settings.

Consultations revealed that a diagnosis or detailed information about a disability was often required for accommodation purposes, that accommodation requests could be contested by professors or others, and that delays in mental health services (e.g. getting an appointment with a psychiatrist) resulted in decreased access to education for students with psychiatric disabilities and addictions, because schools were relying on these practitioners to verify students' accommodation requests.⁶ During the consultations, many people stated that maintaining privacy of their health information was very important, due to continued societal stigma surrounding mental health disabilities.

In 2013, the Ontario Ministry of Training, Colleges and Universities (MTCU) – through the Mental Health Innovation Fund – provided funding for a project on the challenges in accommodating post-secondary students with mental health disabilities. The project report, entitled *Recommendations for Documentation Standards and Guidelines for Post-Secondary Students with Mental Health Disabilities (the Academic Accommodations Report)*, released in 2015, highlighted systemic barriers faced by post-secondary

⁶ Ontario Human Rights Commission, *Minds that matter: Report on the consultation on human rights, mental health and addictions* (2012), online: www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions at 83-84.

students with mental health disabilities when seeking academic accommodations relating to disclosing diagnosis, delays in receiving medical assessments and documentation, requiring students to arrange for academic accommodations directly through their instructors and lack of awareness of relevant policies and services.

The report emphasized that a student's functional limitations in an academic environment, rather than a DSM diagnosis, is the most accurate and appropriate way to assess and implement academic accommodations. The report made comprehensive recommendations and provided a sample medical documentation form that post-secondary institutions can use to obtain relevant information about functional limitations, without requesting unnecessary and private medical information.

OHRC's mental health policy and targeted legal action

The OHRC's 2014 *Policy on preventing discrimination based on mental health disabilities and addictions*⁷ (*mental health policy*) outlines the medical information to be provided when seeking accommodation. It states that a person is generally required to provide confirmation of a disability, limitations and types of accommodations being requested. The accommodation provider does not generally have the right to know a person's confidential medical information, including a diagnosis. The *mental health policy* states that a diagnosis should only be requested in rare circumstances such as where a person's needs are complex, challenging or unclear and more information is needed, or where the information clearly relates to the accommodation being sought. In such situations, the accommodation provider must be able to clearly justify why the diagnosis is needed.

In July 2015, the OHRC intervened in an Application before the Human Rights Tribunal of Ontario (HRTO), which raised issues related to medical documentation that the OHRC had been monitoring. The Application alleged that a university's requirement that students disclose their DSM diagnosis to register for academic accommodations was discriminatory.

The OHRC intervened in this Application to address some of the systemic barriers facing students with mental health disabilities in the post-secondary sector. In particular, the OHRC sought to bring institutions' approaches to medical

⁷Ontario Human Rights Commission, *Policy on preventing discrimination based on mental health disabilities and addictions* (2014), online: www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions.

documentation and accommodating mental health disabilities in line with the *Code*, the OHRC's *mental health policy* and the recommendations in the *Academic Accommodations Report*.

The OHRC worked with the university and the student who filed the discrimination claim to develop new documentation guidelines to access academic accommodations.⁸ The revisions addressed potential barriers experienced by students with mental health disabilities while ensuring that the university receives the appropriate medical documentation to help determine academic accommodations.

Inquiry addressing systemic barriers at post-secondary institutions in Ontario

In keeping with its systemic mandate, the OHRC sought to spread the positive results achieved at one university to all public colleges and universities in Ontario. To that end, in 2016 the OHRC wrote to all public colleges and universities in Ontario asking them to implement six specific measures to reduce systemic barriers to post-secondary education for students with mental health disabilities (Appendix 1).

The six measures

1. Eliminate mandatory disclosure of diagnosis

The OHRC requested that institutions ensure that the medical documentation guidelines, medical documentation forms and procedures used across all divisions and faculties do not require students to disclose their mental health disability diagnosis to register with the Office for Students with Disabilities (OSD), or to receive accommodations.

The OHRC requested this change because policies that routinely require students with a mental health disability to reveal a DSM diagnosis to access academic accommodations create barriers to equality. Requiring a DSM diagnosis can have an impact on a student's autonomy and dignity. As well, the stigma associated with

⁸ New documentation guidelines for accommodating students with mental health disabilities, online: www.ohrc.on.ca/en/news_centre/new-documentation-guidelines-accommodating-students-mental-health-disabilities.

mental health disabilities can mean that a person will not come forward and request the accommodation they need, if they have to reveal information about their diagnosis.

Accommodation requires individualized assessment. The definition of disability under the *Code* is flexible and encompasses new and emerging disabilities and disabilities for which a precise diagnosis is unclear or has not yet been determined. Accordingly, the duty to accommodate can be triggered even when there is no specific DSM diagnosis. Furthermore, a DSM diagnosis does not necessarily help determine what accommodations need to be provided and may foster reliance on stereotypes about particular mental health disabilities.

Students may have difficulty accessing mental health services in a timely way, and reaching a conclusive diagnosis may take up to 18 months or may never be possible. In these instances, students may have functional limitations associated with mental health disabilities that require accommodation even if a DSM diagnosis has not yet been determined.

As such, academic accommodations should be determined based on functional limitations, rather than a DSM diagnosis.

2. Provide interim accommodations

The OHRC requested that institutions make it clear that students may request interim accommodations for mental health disabilities pending receipt of medical documentation.

An institution's obligations under the *Code* include providing interim accommodations while waiting to receive medical documentation. Students may require accommodation for functional limitations associated with a mental health disability before they are able to obtain medical documentation. Therefore, where a student is waiting to be assessed by a health care professional, post-secondary institutions should provide interim accommodations using the best information available, including how the student identifies their own needs, pending the assessment.⁹

⁹ The accommodation process is a shared responsibility. Everyone involved should co-operatively engage in the process, share information and consider potential accommodation solutions. Students seeking

3. Accommodate temporary mental health disabilities

The OHRC requested that institutions make it clear that both temporary and permanent mental health disabilities will be accommodated. Under the *Code*, there is a duty to accommodate the needs of persons with disabilities to ensure equal access to education services. All disabilities, whether temporary, permanent, minor or significant, must be accommodated to the point of undue hardship.

4. Consider retroactive accommodations where appropriate

The OHRC requested that institutions do not state or imply that requests for accommodation after a deadline, test or course completion (i.e. retroactive accommodation) will not be considered. In some cases, the nature of a mental health disability may leave a student unable to identify that they have a disability or that they have accommodation needs. In these cases, institutions should not refuse to consider accommodation requests retroactively. All requests for accommodation should be meaningfully considered on an individualized basis.

5. Arrange for accommodation through centralized process

The OHRC requested that institutions not require students to reveal their private medical information to, or seek accommodation directly from, their instructors. Requiring students with mental health disabilities to establish their need for accommodation with individual instructors can create barriers for access to appropriate accommodations for some students with mental health disabilities. These barriers arise because students may find approaching individual instructors intimidating, fear stigma or a negative response from their instructor. Furthermore, instructors may not be well-positioned to respond to direct requests for accommodation.

As well, the *mental health policy* emphasizes the importance of maintaining confidentiality for people with mental health disabilities. Accommodation requests should be handled through an Office for Students with Disabilities. These Offices should take steps to maintain strict confidentiality and safeguard privacy, for example by keeping medical documentation in locked filing cabinets and/or in password-protected computer databases or files. A student's involvement with

accommodations are responsible for making their accommodation needs known to the best of their ability and providing medical documentation about their functional limitations as soon as possible.

the Office for Students with Disabilities, including the fact that he or she has received academic accommodations, should not be identified on test results, student records, transcripts or graduation documentation.

6. Implement clear communications and training

The OHRC requested that medical documentation guidelines, forms and procedures be clearly communicated to all students, faculty and staff. Improving awareness about available services and procedures is essential to creating meaningful access to appropriate accommodations for students with mental health disabilities. Effective training of faculty and staff about mental health and academic accommodations, including responsibilities under the *Code*, is also an important part of tackling the systemic challenges faced by students with mental health disabilities.

Reported outcomes

All public colleges and universities reported back to the OHRC.

Overall, the responses received from post-secondary institutions showed a willingness to amend policies and practices to ensure compliance with the *Code* and a shared commitment to eliminating barriers for students with mental health disabilities. While some institutions have indicated that they have not yet fully implemented the six measures or require governing body approvals to do so, as of the date of this report, all public colleges and universities have committed to implementing the six measures outlined by the OHRC.

Institutions in the college sector responded positively to the OHRC's initial letter, agreeing to amend policies and procedures where necessary to comply with the OHRC's outlined measures.

Most universities that are member institutions of the Council of Ontario Universities (COU) opted to respond to the OHRC's initial letter collectively through the COU. The response from this umbrella organization, which did not provide the requested information and commitment, did not meet the OHRC's stated expectations. The OHRC then sent a second letter, drawing attention to each institution's individual obligations under the *Code* and requesting a response

setting out the institution's distinct commitment and plan for meeting the six previously outlined measures (Appendix 2). Following the second letter to the universities that had responded through the COU, each institution reported back to the OHRC.

It is worth mentioning that the Ontario College of Art and Design University (OCADU), which is a COU member, showed leadership in the university sector by responding to the OHRC's initial correspondence and showing a robust commitment to removing barriers for students with mental health disabilities. Hearst University, which is not a member of the COU, also responded positively to the OHRC's initial letter.

Based on self-reported modification of policies, guidelines and procedures, post-secondary institutions have made substantial progress in addressing the barriers experienced by students with mental health disabilities in accessing academic accommodations.

All of Ontario's colleges and universities have said they will stop requiring a DSM diagnosis to permit students to register for academic accommodations and supports. While most have also implemented this commitment, a few universities have not yet fully done so and indicated that implementation is ongoing or that amendments are pending approval. All post-secondary institutions have committed to providing interim accommodations while waiting for final medical documentation and meaningfully considering all requests for accommodation, including retroactive accommodations. All post-secondary institutions reported that they already have improved, or will improve, measures to ensure privacy and confidentiality for students. They have also all committed to improving communication about relevant policies and procedures, and improving training for staff.

Some institutions described innovative ways to implement the six measures. These included using software to arrange and communicate accommodations directly with instructors using the student's ID number as an identifier, and setting out clear and practical guidelines on source of information used to determine interim accommodations. These sources included student self-reports, history of formally identified disability, third-party reports, personal observations by the disability service professionals, screening tools, history of academic accommodations, relevant documentation from previous educational institutions and proof of disability from non-medical sources.

Some institutions also said they would look at going beyond the six measures to implement other recommendations in the *Academic Accommodations Report* (for example, by exploring the use of student satisfaction surveys for students who are registered with the Office for Students with Disabilities).

Many institutions highlighted their proactive initiatives to maximize accessibility and remove barriers for students with mental health disabilities. Examples are:

- Anxiety management support groups
- Student mental health and well-being strategies that include early intervention for students in distress
- A partnership with the Canadian Mental Health Association to develop a student training program to support mental health on campus
- Developing an innovative, award-winning Mental Health Hub service delivery model that has sufficiently improved students' access to supports on and off campus
- Mandatory training initiatives for faculty and staff such as suicide prevention/awareness, Mental Health First Aid, Assisting Students in Distress.

The long-term impact of the operationalization of these various commitments to enhancing access to education remains to be seen. Post-secondary institutions should continually monitor their policies and practices to make sure students with mental health disabilities have the opportunity to fully take part in their services.

Remaining concerns

In response to the OHRC's inquiry, several institutions reported policies or practices that raise concerns.

Requiring interim documentation

Some institutions indicated that to receive interim accommodation, students are required to provide some form of "interim documentation" from a medical professional. This approach fails to account for the needs of students who may require accommodation before they can see a medical professional. Interim

accommodations should not be refused because the student does not yet have medical documentation. Institutions should work with the best information available, including how the student identifies their own needs, pending assessment.

Accepting documentation only from specialists and treating family physicians

Some institutions indicated that they only accept documentation from a specialist, or a family physician who is familiar with the student's circumstances. In the context of a shortage of family physicians and long wait times to receive appointments with family physicians, not all students may be in a position to provide medical documentation from a family physician when their accommodation needs arise. Furthermore, students who move away from home to attend college or university may rely on medical professionals other than their treating family physician. Unless there are *bona fide* (legitimate) reasons to question the provided medical information, documentation from a licensed medical professional should not be refused because it is not completed by a student's family physician.

Emphasis on "self-advocacy"

Some institutions referred to "self-advocacy" as a rationale for direct student-professor communication relating to academic accommodations, and noted that direct communication may lead to better tailored accommodations. Requiring students with mental health disabilities to establish their need for accommodation with individual instructors can create barriers to appropriate accommodations for some students with mental health disabilities. While students can be provided with the option to directly discuss their accommodation needs or the implementation of their accommodation with instructors, they should not be *required* to engage in "self-advocacy" with individual instructors as a condition for receiving academic accommodations.

OHRC's work with the Ministry of Training, Colleges and Universities

One of the obstacles to removing the emphasis on disclosure of diagnosis had been the Ministry of Training, Colleges and Universities' (MTCU) requirement for a DSM diagnosis when applying for bursaries and grants for students with disabilities. Since Offices for Students with Disabilities at colleges and universities are responsible for gathering and verifying information to establish eligibility for the Ontario Student Assistance Program Bursaries for Students with Disabilities and the federal Canada Student Grants, this meant post-secondary institutions could not completely eliminate the requirement to disclose a DSM diagnosis for students seeking such financial aid.

The OHRC therefore wrote to the MTCU in April 2016, asking the Ministry to revise its policies so that students are only required to provide a medical certificate that verifies that the student has a disability, without having to disclose a specific diagnosis (Appendix 3). The MTCU advised the OHRC that it had revised its disability-related eligibility criteria identified in OSAP forms and guidelines to remove the requirement for disclosure of mental health diagnosis, effective for the 2016-2017 OSAP academic year.

OHRC's work with the College of Physicians and Surgeons of Ontario and the Medical Documentation Policy Statement

Medical professionals play a key role when persons with disabilities are seeking accommodations so they can equally benefit from and take part in social areas covered under the *Code*. To supplement post-secondary institutions' efforts to make medical documentation requirements consistent with the *Code*, and to address the issue of medical documentation for accommodation purposes more broadly, the OHRC wrote to the College of Physicians and Surgeons of Ontario (CPSO) drawing attention to sections of the OHRC's latest policy (the *Policy on ableism and discrimination based on disability*),¹⁰ which deals with the human rights principles relating to medical documentation of disabilities for accommodation purposes (Appendix 4). The CPSO responded by committing to update relevant policies as necessary to incorporate these principles and to communicate with its members about the OHRC's policy.

¹⁰ Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability* (2017), online: www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability.

The human rights principles relating to accommodation, which arose in the post-secondary context, have broader application. In all social areas (including employment, services, housing and membership in unions), replacing an emphasis on diagnosis with a focus on functional limitations associated with a disability allows for implementing appropriate accommodations that respect the dignity and privacy interests of people with disabilities. In February 2017, the OHRC reaffirmed this in its *Policy statement on medical documentation to be provided when a disability-related accommodation request is made*.¹¹

This policy statement highlights the type and scope of medical information to be provided to support an accommodation request. This information should include:

- That the person has a disability
- The limitations or needs associated with the disability
- Whether the person can perform the essential duties or requirements of the job, of being a tenant, or of being a service user, with or without accommodation
- The type of accommodation(s) that may be needed to allow the person to fulfill the essential duties or requirements of the job, of being a tenant, or of being a service user, *etc.*
- In employment, regular updates about when the person expects to come back to work, if they are on leave.

Where 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 organization enough information to make an informed decision about the accommodation.

Next steps

Post-secondary institutions have reported encouraging changes to policies, guidelines and practices aimed at removing barriers for accessing appropriate accommodations. Some post-secondary institutions, as well as the COU, have highlighted the need for a consistent, sector-wide approach to medical documentation. While harmonizing practices does not detract from each

¹¹ Ontario Human Rights Commission, *Policy statement on medical documentation to be provided when a disability-related accommodation request is made* [Medical documentation policy statement], online: www.ohrc.on.ca/en/ohrc-policy-position-medical-documentation-be-provided-when-disability-related-accommodation-request.

institution's individual obligations, the OHRC encourages further cooperation among stakeholders in the post-secondary sector to strategize about creating and maintaining practices that are consistent across the sector, continue to comply with human rights obligations, and maximize equal access to education.

While the OHRC directed this initiative to public colleges and universities, private post-secondary institutions have the same obligations under the *Code* and should review their policies and practices and make the necessary amendments to ensure compliance with the *Code*.

Appendix 1: Letter addressed to the president of each public college and university in Ontario

Re: Medical documentation guidelines and accommodation

I am writing to all public colleges and universities in Ontario about medical documentation guidelines and accommodation for post-secondary students with mental health disabilities.

The Ontario Human Rights Commission (OHRC) recently intervened in an Application before the Human Rights Tribunal of Ontario which alleged that a university's requirement that students disclose their Diagnostic and Statistical Manual (DSM) diagnosis to register for mental health accommodations and supports was discriminatory.

We intervened in the case to help bring all post-secondary institutions' approaches to medical documentation and accommodation in line with the Ontario *Human Rights Code* (the *Code*), our *Policy on preventing discrimination based on mental health disabilities and addictions* (the *Mental Health Policy*) and the recommendations in a provincially-funded report entitled *Recommendations for Documentation Standards and Guidelines for Post-Secondary Students with Mental Health Disabilities* (the *Academic Accommodations Report*).

The OHRC worked with the university and the student who filed the discrimination claim to develop new documentation guidelines to access academic accommodations. The revisions remove potential barriers experienced by students with mental health disabilities while ensuring that the university gets appropriate medical documentation to help determine academic accommodations.

The OHRC is now contacting all of Ontario's public colleges and universities to ask that they follow suit. This is in keeping with the OHRC's mandate to identify, prevent, and eliminate discrimination, and to promote human rights within the province using a range of powers under the *Code*, including the power to conduct inquiries in the public interest and initiate Applications before the HRTO.

An evolving approach to medical documentation

We recognize that post-secondary institutions have been working hard to make their services accessible to, and better accommodate, increasing numbers of students with mental health disabilities.

I believe your institution and the OHRC have the shared goal of eliminating barriers and ensuring students with mental health disabilities will be able to access the accommodations and supports that they need to succeed.

The OHRC recognizes that requesting some form of diagnostic information, often a DSM diagnosis, has been the norm across post-secondary institutions for a number of years. However, the time has come to revisit that approach. As service providers, post-secondary institutions have obligations under the *Code*. Failing to meet these obligations may result in human rights applications being filed with the Human Rights Tribunal of Ontario.

To ensure compliance with the *Code* and the OHRC's *Mental health policy*, students with mental health disabilities should no longer have to disclose a DSM diagnosis to receive accommodations and supports. All of your institution's medical documentation guidelines and procedures should be reviewed and, if necessary, updated to make sure that this is not a requirement.

In addition, recent research and consultation in this area has identified several other systemic barriers related to accommodating the needs of students with mental health disabilities. If you have not already done so, these barriers should also be addressed. These are explained further in Appendix A.

As a result, the OHRC seeks your commitment that by September 6, 2016, the start of the next academic year, your institution will have medical documentation guidelines, medical documentation forms and procedures in place across all divisions and faculties that:

- 1) Do not require students to disclose their mental health disability diagnosis to register with your Office for Students with Disabilities (OSD), or receive accommodations or supports;
- 2) Make it clear that students may request interim accommodations for mental health disabilities pending receipt of medical documentation;
- 3) Make it clear that both temporary and permanent mental health disabilities will be accommodated;

- 4) Do not state or imply that requests for accommodation after a deadline, test or course completion (i.e. retroactive accommodation) will not be considered;
- 5) Do not require students to reveal their private medical information to, or seek accommodation directly from, their professors, instructors, teaching assistants, *etc.*; and
- 6) Are clearly communicated to all students, faculty and staff.

A detailed checklist explaining what is required to fully implement these six measures is found in Appendix B to this letter.

In addition to these six measures, I also encourage your institution to review the *Academic Accommodations Report* and, where necessary, implement the other recommendations and best practices identified therein.

Next steps

Please respond to this letter by April 30, 2016 to confirm that your institution has already implemented or will commit to implementing these six measures across all divisions and faculties, and what steps will be taken to do so, by September 6, 2016. I am also asking that on or before September 6, 2016, you provide written confirmation that the six measures have been implemented in accordance with the checklist in Appendix B to this letter; advise of any other steps you have taken to implement recommendations in the *Academic Accommodations Report*; and send the OHRC copies of your new or amended documentation guidelines, medical documentation forms and procedures.

If you would like to discuss this further, please do not hesitate to contact my office. OHRC staff are also available to assist with any questions. Your staff may contact Reema Khawja, a lawyer in our Legal Services and Inquiries Branch at 416-326-9870.

I look forward to hearing from you before April 30, 2016.

In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and the responses received may be made public.

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

cc: The Honourable Reza Moridi
Minister for Training, Colleges and Universities

College Committee on Disability Issues

Heads of Student Affairs

Ontario Committee on Student Affairs

Interuniversity Disability Issues Association

Appendix A – Background

The *Code* and the Ontario Human Rights Commission’s *Mental Health Policy*

Asking people to reveal their disability diagnosis or provide medical information beyond what is needed to provide an accommodation or verify eligibility for a targeted benefit or service raises human rights and privacy concerns. The ability to maintain control of and privacy over sensitive medical information is particularly important for people with mental health disabilities because of the considerable social stigma still associated with these disabilities. Requiring a DSM diagnosis impacts on a student’s autonomy and dignity and may deter students from requesting accommodation.

The OHRC’s *Mental health policy* has a section dealing with medical information to be provided when seeking accommodation. It states that a person is generally required to provide confirmation of a disability or medical condition, limitations and types of accommodations being requested. However, the accommodation provider does not generally have the right to know a person’s confidential medical information, including a diagnosis. The *Mental health policy* states that a diagnosis should only be requested in rare circumstances such as where a person’s needs are complex, challenging or unclear and more information is needed or where the information clearly relates to the accommodation being sought. In such situations, the accommodation provider must be able to clearly justify why the diagnosis is needed.

Students with mental health disabilities should not have to disclose a DSM diagnosis to receive accommodations and supports. Rather, the focus should be on determining functional restrictions and limitations due to mental health disability.

There are a number of reasons for this. The definition of disability under the *Code* is flexible and encompasses novel disabilities and disabilities for which a precise diagnosis is unclear or has not yet been determined. Students may have difficulty accessing mental health services in a timely way. Reaching a conclusive diagnosis may take up to 18 months or may never be possible. However, a student may have functional limitations connected to a mental health disability requiring accommodation notwithstanding the fact that a DSM diagnosis may not have been determined.

A DSM diagnosis is neither sufficient nor necessary to indicate what a student's functional limitations are or what accommodations are needed. Knowledge of a diagnosis, as opposed to functional limitations, does not permit the accommodation provider to better determine what accommodations are needed. Instead, knowledge of a diagnosis can lead an accommodation provider to improperly focus on whether a person's functional limitations match the DSM diagnosis.

The OHRC recognizes that colleges and universities are competitive environments and that there may be concerns about verifying that requests for accommodation are legitimate to safeguard "academic integrity". However, an alternative way to ensure that a student is eligible for accommodation and preserve "academic integrity" is to ask a medical practitioner to confirm that the student experiences a functional limitation due to a mental health condition or diagnosed disability. This can be done without requiring identification of the DSM diagnosis.

The OHRC is also aware that at the present time students who are applying for the Ontario Student Assistance Program (OSAP) Bursary for Students with Disabilities (BSWD), the Canada Student Grant for Persons with Permanent Disabilities and the Canada Student Grant for Services and Equipment for Persons with Permanent Disabilities (the Canada Student Grants) must provide a DSM diagnosis to establish eligibility for those grants. However, this does not support the need for a diagnosis in all instances. Suggestions for how this can be addressed are provided in the checklist in Appendix B. As well, the OHRC is in the process of writing to the Ministry of Training, Colleges and Universities (MTCU) to ask that this requirement be removed altogether.

In addition to requiring a diagnosis, the OHRC has identified several other barriers experienced by students with disabilities which are also inconsistent with the *Code* and *Mental health policy*.

An institution's obligations under the *Code* include the provision of interim accommodations pending receipt of medical documentation. A student may have functional limitations connected to a mental health disability requiring accommodation notwithstanding the fact that a diagnosis may not have been determined. Therefore, where a student is waiting to be assessed by a health care professional, post-secondary institutions should provide interim accommodations using the best information they have available, including how the student identifies their own needs, pending the assessment.

Under the *Code*, there is a duty to accommodate the needs of persons with disabilities to ensure equal access to education services. All disabilities whether temporary, permanent, minor or significant must be accommodated to the point of undue hardship. An institution's accommodation materials should not suggest otherwise but rather should clearly state that temporary mental health disabilities will be accommodated.

In some cases, the nature of a mental health disability may leave a student unable to identify that they have a disability or that they have accommodation needs. A student may be experiencing a disruption in their functioning but may not be able to follow the institution's process for arranging accommodation. In these circumstances, if a student has failed to meet performance expectations in a test, exam or assignment, the institution has an obligation to consider accommodation retroactively. An institution's information on accommodation should not state or imply that requests for accommodation after a deadline, test or course completion will not be considered. Rather, it should be clear that all requests for accommodation will be meaningfully considered as they arise.

The *Mental health policy* emphasizes the importance of maintaining confidentiality for people with mental health disabilities. Therefore, students should not be required to seek accommodation directly from, or provide medical information or documentation to, their professors, teaching assistants, university administrative staff, *etc.* Accommodation should all be handled through the Office for Students with Disabilities. OSDs should take steps to maintain strict confidentiality and safeguard privacy, for example by keeping medical documentation in locked filing cabinets and/or in password protected computer databases or files. A student's involvement with the OSD, including the fact that he or she has received academic accommodations, should not be identified on test results, student records, transcripts or graduation documentation.

The Academic Accommodations Report

In addition to the above, the MTCU funded *Academic Accommodations Report* contains recommendations for documentation standards for post-secondary students with mental health disabilities which the OHRC urges post-secondary institutions to review and implement.

The *Report* recommends that post-secondary institutions in Ontario:

1. Use functional limitations and not diagnosis the basis for academic accommodations
2. Provide interim accommodations while a student is waiting to be assessed by a health care professional
3. Provide information about temporary disabilities in their literature and develop a process for accommodating temporary disabilities
4. Consider requests for retroactive accommodation (requests for accommodation after a scheduled test, exam or assignment has taken place and where the student has failed to meet performance expectations due to a disruption in their mental health)
5. Have their Offices for Students with Disabilities (OSDs) and not the student communicate about accommodations with professors
6. Have clear policies and procedures for accommodating students with disabilities
7. Improve awareness and communication of available services
8. Implement effective training for faculty on issues related to mental health and faculty's role in the accommodation process
9. Create a process for dealing with accommodation appeals
10. Establish Accommodation Advisory Committees for each school/faculty to advise the Dean on matters related to accommodation trends and the need for accommodation-related resources
11. Establish accommodation teams made up of professionals with different areas of expertise to deal with complex accommodations
12. Use student satisfaction surveys for students registered with OSDs to determine what is working and what needs improvement
13. Have OSDs act as resource hubs offering academic and social activities for students with disabilities

The final recommendation is that the MTCU, in collaboration with the College of Psychologists of Ontario, create a task force to look at diagnostic standards for Learning Disabilities and Attention Deficit Hyperactivity Disorder.

Appendix B – Checklist

The *Academic Accommodations Report* provides a sample Functional Limitations Assessment Form (Sample Form) that can be completed by a medical practitioner and given to the post-secondary institution to receive academic accommodation. Instead of a diagnosis, the Sample Form asks for other relevant information about the disability and needs, such as whether the person has been diagnosed with a disability or is being monitored to determine a diagnosis, whether symptoms are continuous or episodic, and the particular impact on academic functioning. The Sample Form also makes it clear that permanent disabilities and temporary disabilities are included.

This Sample Form can be used for both physical and mental health disabilities but may not be suitable for learning disabilities or Attention Deficit Hyperactivity Disorder.

Adopting this Sample Form addresses many of the six measures that the OHRC is asking every public post-secondary institution to commit to. Whether you choose to use this Form or not, you should check to make sure that your medical documentation guidelines, medical documentation forms and procedures comply with the following requirements.

With respect to **diagnosis and gathering information**, documentation guidelines, forms and procedures should:

- Clearly state that under the Ontario *Human Rights Code*, students are not required to disclose their disability diagnosis to register for OSD services and access accommodations and supports.
- Make providing a diagnosis voluntary and not apply any explicit or implicit pressure to disclose a diagnosis. This includes not implying that accommodations will be better or quicker if a diagnosis is provided. Your form may allow students to opt into consenting to provide a diagnosis on a completely voluntary basis. It can also explain that the student may need to consent to provide a diagnosis if he or she applies for certain federally or provincially-funded bursaries and grants and privately-funded external scholarships and financial awards.
- Not stipulate that only a psychologist or psychiatrist can complete the form (any appropriate licensed medical professional such as a family doctor, psychiatrist, psychologist or psychological associate should be able to complete the form).

- Ask the medical professional to confirm that the student has a disability¹² OR is being monitored or assessed to determine a diagnosis.
- Focus on requesting information about functional limitations due to a health condition that impairs the student's academic functioning while pursuing post-secondary studies. The form may also ask medical professionals to suggest appropriate accommodations.
- Not indicate in any way that only permanent disabilities or significant temporary disabilities will be accommodated. All disabilities that give rise to functional limitations that impair academic functioning should be accommodated.
- If asking about medication, ask only about the effects of medications on academic functioning and not about the details of the medication prescribed.
- Not require students to give blanket consent to release of additional medical information or subsequent discussion with the medical professional. If further information is justifiably needed to make an accommodation,¹³ the student can be asked to provide express and voluntary informed consent to release that information.
- Ask for updated medical information where a disability is identified as temporary or where academic accommodations need to be re-visited over time to ensure that they continue to meet the student's needs appropriately.

With respect to **interim and retroactive accommodations**, documentation guidelines, forms and procedures should:

- Confirm that assistance will be provided to students who require interim accommodation pending receipt of medical documentation.
- Establish a process to address interim accommodations in situations where a student self-identifies accommodation needs or it becomes apparent to staff in the Office for Students with Disabilities that a student may have an undiagnosed health condition with accompanying functional limitations that impair the student's academic functioning.

¹² The following criteria should be used for determination of a disability: the student experiences functional limitations due to a health condition that impairs the student's academic functioning while pursuing post-secondary studies.

¹³ For example if the student's accommodation needs are complex or where there is a need to clarify the information that has been provided regarding functional limitations.

- Take into account the realities of any challenges that may be involved with a student obtaining an appointment or series of appointments with a medical professional in order to be diagnosed with a disability or have medical documentation forms completed. If time limits must be contemplated, they should be determined on a case-by-case basis in consultation with the student.
- Remove any statement that suggests that retroactive accommodations (*i.e.* after failing to meet performance standards on a test, assignment or exam or during a course due to a disability) will not be considered. Instead, include a statement that the institution will consider requests for retroactive accommodation on a case-by-case basis.
- Establish a process to meaningfully consider requests for retroactive accommodation or, if a process already exists, provide clear information to students, faculty and staff about that process.

With respect to **privacy and confidentiality**, documentation guidelines, forms and procedures should:

- Not require students to request accommodation directly from, or share any medical information with, their professors, instructors, teaching assistants, *etc.* Students should also not be required to deliver accommodation letters directly to professors, instructors or teaching assistants. Offices for Students with Disabilities should communicate with professors, instructors and teaching assistants about accommodations.
- Ensure that all information provided to the Office for Students with Disabilities is kept confidential. This includes maintaining documentation in locked filing cabinets and on encrypted and password protected databases that can only be accessed by staff in the OSD who need access to the information.
- Clearly state that a student's involvement with disability services and the fact that the student has received academic accommodations will not be identified on the student's official university records, test results, academic transcripts or graduation documentation.

Communication to students, faculty and staff about the documentation guidelines, forms and procedures should:

- Include posting the institution's medical documentation guidelines and forms online and providing information about disability accommodation in any student handbook. Students should also receive information about academic accommodation at the beginning of each semester via the institution's email communications or newsletter. Information about academic accommodation should also be included on all course syllabi distributed to students. Links to policy references and other resources should be provided including links to the Ontario Human Rights Commission's policies (in particular the *Mental health policy*¹⁴), other relevant institution policies (such as the institution's human rights policy; accommodation policy and privacy policy); links to information about the institution's equity/human rights office; training resources for faculty, staff and students (for example an online video series on accommodating post-secondary students with mental health disabilities¹⁵; an information and resource handbook, *A Guide to Academic Accommodations and Managing your Mental Health While on Campus*, for students and families¹⁶).
- Include in-depth training on the documentation guidelines, forms and procedures for staff in the Office for Students with Disabilities.
- Include effective and ongoing training for full-time faculty and part-time faculty, instructors and teaching assistants on mental health and accommodation. This includes training on general mental health awareness; information on interacting with a student who may have a mental-health related issue; and understanding their role in the accommodation process including their responsibilities under the *Code*. Some of the resources listed above may be helpful in this regard.

¹⁴ <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions>

¹⁵ <http://www.stlawrencecollege.ca/about/mental-health-research-project/content-of-the-videos/>

¹⁶ <http://www.stlawrencecollege.ca/about/mental-health-research-project/student-handbook/>

Appendix 2: Second letter to universities from the OHRC Chief Commissioner

June 9, 2016

Letter addressed to Presidents of University of Guelph, Queen's University, Carleton University, Brock University, Trent University, University of Ottawa, Ryerson University, University of Ontario Institute of Technology, Western University, University of Waterloo, Nipissing University, McMaster University, Algoma University, University of Windsor, Lakehead University, Laurentian University, University of Toronto, Wilfrid Laurier University and Council of Ontario Universities

Re: Medical documentation guidelines and accommodation

As you know I wrote to each public college and university in Ontario requesting a commitment to measures that will bring accommodation policies and practices relating to students with mental health disabilities in line with the requirements of the Ontario *Human Rights Code* (Code). In that letter I asked your institution to provide its commitment and outline its plan for implementing the outlined measures by September 6, 2016.

The outlined measures consist of implementing medical documentation guidelines, medical documentation forms and procedures across all divisions and faculties that:

1. Do not require students to disclose their mental health disability diagnosis to register with your Office for Students with Disabilities (OSD), or receive accommodations or supports;
2. Make it clear that students may request interim accommodations for mental health disabilities pending receipt of medical documentation;
3. Make it clear that both temporary and permanent mental health disabilities will be accommodated;
4. Do not state or imply that requests for accommodation after a deadline, test or course completion (i.e. retroactive accommodation) will not be considered;
5. Do not require students to reveal their private medical information to, or seek accommodation directly from, their professors, instructors, teaching assistants, *etc.*; and
6. Are clearly communicated to all students, faculty and staff.

The OHRC has been in contact with the Ministry of Training, Colleges and Universities (MTCU) regarding medical documentation requirements, in particular the request for a mental health diagnosis, for the purposes of eligibility for the Ontario Student Assistance Program (OSAP) and federal disability grants. The MTCU has advised that it has revised its disability-related eligibility criteria identified in OSAP forms and guidelines to remove the requirement for disclosure of mental health diagnosis, effective for the 2016-2017 OSAP academic year. This change will further facilitate consistency relating to the issue of disclosure of diagnosis across the post-secondary education sector.

In lieu of a response from your institution, the OHRC received a response from the Council of Ontario Universities (COU). The COU's response lacks specific details about whether your institution is committing to implementation of the six measures and the associated timelines. The letter does not indicate when we will learn what your institution will be doing.

As a service provider, each university has discrete obligations to its students under the *Code*. As we are working to ensure that every post-secondary institution's approach to medical documentation and accommodation is consistent with the *Code*, we continue to request a response from each individual institution.

The COU letter states that member institutions are seeking advice and working collaboratively to develop a collective understanding of, and wherever possible, a consistent, sector-wide approach to operationalizing the six measures outlined in my previous letter. Consistency and a sector-wide response are laudable goals and I commend your institution for recognizing your obligations under the *Code* and striving toward a systemic solution. I note that the purpose of the Academic Accommodations Report which was funded by the Ministry of Training, Colleges and Universities, was to develop a sector-wide approach to accommodating students with mental health disabilities.

Implementing the six measures the Commission has identified and acting on the recommendations of the Academic Accommodations Report will ensure a systemic, sector-wide response. Moreover, working collaboratively with other universities – while desirable – does not preclude meeting your current obligations under the *Code* through provisional operationalization of the six outlined measures at your institution.

Please respond to this letter to confirm that your institution has implemented or is in the process of implementing the six outlined measures by September 6, 2016. If you are not able to meet this timeline, we request that you report back with reasons and propose a detailed alternative timeframe which accounts for your institution's internal governing processes. We are requesting your response by July 8, 2016.

Appropriate accommodations which satisfy both the procedural and substantive components of the duty to accommodate are a key aspect of human rights in Ontario. The OHRC is using its mandate to identify, prevent and eliminate discrimination and advance respect for human rights in Ontario to ensure that post-secondary institutions are meeting their duty to accommodate students with mental health disabilities. The *Code* gives the OHRC a range of powers to fulfil its mandate.

Section 35 of the *Code* gives the OHRC the power to initiate applications at the Human Rights Tribunal of Ontario and request remedies that would promote compliance with the *Code*.

Subsection 31 of the *Code* outlines the OHRC's extensive powers to conduct an inquiry. Subsection 31(7) states:

Powers on inquiry

(7) A person conducting an inquiry may,

- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;*
- (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;*
- (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;*
- (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;*
- (e) take measurements or record by any means the physical dimensions of a place;*

- (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and*
 - (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test.*
- 2006, c. 30, s. 4.*

Subsection 31(11) of the *Code* outlines the legal obligation to comply with the OHRC's inquiry requests. It states:

Obligation to produce and assist

(11) A person who is requested to produce a document or thing under clause (7) (a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form.

At this time, if your institution is not agreeable to outlining its own distinct commitment and plan to meet the six previously outlined measures by July 8, 2016, the OHRC formally requests production of the following by August 31, 2016 in accordance with section 31 of the *Code*:

- (a) Your institution's current policies and practices relating to the accommodation process for students with mental health disabilities including the role of the Office for Students with Disabilities and how accommodations are communicated to professors, instructors and teaching assistants.
- (b) Your institution's current policies, practices and any forms used relating to medical documentation requirements for student with mental health disabilities who need academic accommodations and whether diagnosis information is routinely requested;
- (c) Your institution's current policies and practices with respect to interim accommodation for students with mental health disabilities pending receipt of medical documentation;
- (d) Your institution's current policies and practices relating to accommodating temporary mental health disabilities;

- (e) Your institution's current policies and practices relating to retroactive accommodation;
- (f) Your institution's current policies and practices relating to complaints about or appeals related to accommodation of students with mental health disabilities.

After September 6, 2016, the OHRC plans to make public its progress on this issue including specific discussion of any institution which continues to fall short on meeting the requirements of the *Code* and the duty to accommodate students with mental health disabilities.

I look forward to receiving a response from you. Please direct your response to the Office of the Chief Commissioner at 180 Dundas Street West, Suite 900, Toronto, ON, M7A 2R9 as well as by email to legal@ohrc.on.ca

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

cc: The Honourable Reza Moridi
Minister for Training, Colleges and Universities
David L. Lindsay
President and CEO
Council of Ontario Universities
180 Dundas Street West
Suite 1800 M5G 1Z8

Appendix 3: Letter to Ministry of Training, Colleges and Universities about OSAP requirements

April 1, 2016

Hon. Reza Moridi
Minister of Training, Colleges and Universities
Ferguson Block
12th Floor, 77 Wellesley Street
Toronto, ON M7A 1N3

Dear Minister:

Re: Diagnosis requirements for OSAP and federal grants

The Ontario Human Rights Commission (OHRC) has a mandate to identify, prevent, and eliminate discrimination, and to promote human rights within the province using a range of powers under the Ontario *Human Rights Code* (*Code*).

The OHRC's powers under the *Code* include reviewing statutes, regulations, programs or policies, and making recommendations for change if these are inconsistent with the intent of the *Code*. The OHRC also conducts inquiries, intervenes in and initiates human rights applications before the Human Rights Tribunal of Ontario.

I am writing to ask that the Ministry of Training, Colleges and Universities (MTCU) stop requiring students to disclose their specific mental health disability diagnosis in order to establish eligibility for the Ontario Student Assistance Program (OSAP) Bursary for Students with Disabilities (BSWD), the Canada Student Grant for Persons with Permanent Disabilities and the Canada Student Grant for Services and Equipment for Persons with Permanent Disabilities (the Canada Student Grants). I understand that the Canada Student Grants, while federal, are administered by the MTCU.

The OHRC recently intervened in an Application before the Human Rights Tribunal of Ontario which alleged that a university's requirement that students disclose their Diagnostic and Statistical Manual (DSM) diagnosis to register for mental health accommodations and supports was discriminatory.

We intervened in the case to help bring all post-secondary institutions' approaches to medical documentation and accommodation in line with the *Code*, our *Policy on preventing discrimination based on mental health disabilities and addictions* (the *Mental Health Policy*) and the recommendations in a report funded by the MTCU entitled *Recommendations for Documentation Standards and Guidelines for Post-Secondary Students with Mental Health Disabilities* (the *Academic Accommodations Report*).

The OHRC worked with the university and the student who filed the discrimination claim to develop new documentation guidelines to access academic accommodations. As a result of the revisions, students at the university will no longer have to disclose their DSM diagnosis to receive mental health accommodations and supports. However, due to MTCU requirements, students will have to do so if they are applying for the OSAP BSWD and Canada Student Grants.

The OHRC has written to Ontario's 20 public universities and 24 public colleges to ask that they also stop requiring that students disclose their mental health disability diagnosis. A copy of the OHRC's letter is attached. However, the fact that the Offices for Students with Disabilities at colleges and universities are also responsible for gathering and verifying information to establish eligibility for the OSAP BSWD and Canada Student Grants means that they cannot completely eliminate this requirement, despite the fact that it raises significant human rights concerns.

Organizations, including government, should design their eligibility requirements using the least intrusive approach, collecting only the medical and *Code*-related information they need to administer the service. It is the OHRC's position that requiring that students provide a diagnosis to verify their eligibility for provincial and federal bursaries and grants for students with disabilities creates unnecessary barriers for students with disabilities. As such, we are asking that MTCU revise its policies so that students are only required to provide a medical certificate that verifies that the student has a disability, without having to disclose their specific diagnosis.

More information about the OHRC's position, including MTCU's compliance with the *Code* and on the relationship between the federal grants and MTCU's responsibilities, is found in the attached letter from an OHRC Senior Policy Analyst to a Research Policy Analyst in MTCU's Student Financial Assistance Branch.

I hope that your Ministry will address the OHRC's concerns. I look forward to hearing from you in this regard.

In keeping with the OHRC's commitment to public accountability and its duties in serving the people of Ontario, this letter and the response received may be made public.

Sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

Encl.

Appendix 4: Letter to the College of Physicians and Surgeons of Ontario

November 3, 2016

Dr. Joel Kirsh
President
College of Physicians and Surgeons of Ontario
80 College Street
Toronto, Ontario M5G 2E2

Dear Dr. Kirsh:

Re: OHRC *Policy on ableism and discrimination based on disability*

The Ontario Human Rights Commission (OHRC) has recently released a *Policy on ableism and discrimination based on disability*. This update of the OHRC disability policy originally released in 2000 includes updated case law and addresses emerging issues. It provides guidance on rights and responsibilities under the Ontario *Human Rights Code* ("the Code") and I am writing to urge you to share this policy with members of the College of Physicians and Surgeons. I also want to highlight in particular the issue of medical documentation for accommodation of disabilities and draw your attention to sections of the policy which can provide guidance to physicians about this issue.

Under the *Code*, employers and unions, housing providers and service providers have a legal duty to accommodate the needs of people with disabilities who are adversely affected by a requirement, rule or standard. Physicians have an important role to play when persons with disabilities are seeking accommodations which will allow them to equally benefit from and take part in services (such as education), housing or the workplace. Accommodation providers such as schools and employers rely on the expertise of physicians to understand the functional limitations and needs associated with a disability in order to implement appropriate accommodations. Those seeking accommodations rely on physicians to provide clear, timely information about their disability-related needs, while still respecting their privacy interests.

In our work, we have seen that there are challenges relating to medical documentation of disabilities and the needs associated with those disabilities in the accommodation process. We have encountered circumstances in which people with disabilities have been unable to gain equal access to services or employment because of ambiguous medical notes that do not provide enough information to allow for meaningful implementation of appropriate accommodations. We have also encountered circumstances in which overly intrusive requests for medical documentation from employers and others create barriers for people with disabilities. Unwarranted requests for private medical information – such as diagnostic information – undermine the dignity and privacy of people with disabilities.

The OHRC has recently been involved in work relating to medical documentation guidelines for post-secondary students with mental health disabilities who are seeking academic accommodations. The OHRC intervened in a legal case that raised the issue of the requirement to disclose a diagnosis (in addition to functional limitations created by the disability) in order to receive academic accommodations at a university. The case was settled. The parties worked collaboratively to develop revised documentation guidelines that minimize barriers for students with mental health disabilities while still maintaining academic integrity and ensuring that the university gets medical documentation to help determine appropriate academic accommodations. Students will no longer be required to disclose a mental health diagnosis. Instead students can provide medical documentation from a licensed health care provider, which confirms the existence of a mental health disability (or that the student is being assessed for a possible disability), and the associated functional limitations that require accommodation. The OHRC has written to all public colleges and universities in Ontario, requesting their commitment to implement similar measures that will enhance access to education for students with mental health disabilities.

The human rights principles relating to accommodation, which arose in the post-secondary context have broader application. In all social areas (including employment, services, housing and membership in unions), replacing an emphasis on diagnosis with a focus on functional limitations associated with a disability allows for the implementation of appropriate accommodations that respect the dignity and privacy interests of people with disabilities.

The OHRC's *Policy on ableism and discrimination based on disability* provides comprehensive guidance on rights and responsibilities under the *Code*. I invite you to review and share this policy with members of the CPSO. The policy also provides practical information about the issue of medical documentation as it relates to accommodation of disabilities. Sections of the policy that address the legal meaning of disability (pages 8-10), roles and responsibilities of the parties in the human rights accommodation process (pages 41-43) and the medical information that should and should not be requested when a person seeks an accommodation (pages 45-48) are of particular relevance on this issue. In the coming months, the OHRC will also be releasing a policy statement on medical documentation of disabilities and the accommodation process.

I have attached a copy of the policy, which can also be found on the OHRC's website (www.ohrc.on.ca/en/our_work/policies_guidelines). I am hopeful that it will be a useful resource for further educating CPSO members about rights and responsibilities under the *Code*. I am confident that doing so will go a long way towards enhancing the rights of people with disabilities as enshrined in the *Code*.

Yours sincerely,

Renu Mandhane, B.A., J.D., LL.M.
Chief Commissioner

CC: Dr. Virginia Walley
President – Ontario Medical Association