Re-establishing the British Columbia Human Rights Commission: strengthening the rights of people with mental health and substance use problems

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Canadian Mental Health Association
British Columbia
Mental health for all

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SUMMARY OF RECOMMENDATIONS

EDUCATION

CMHA BC recommends the commission functions prioritize preventive and responsive education that reduces stigma and supports resolving situations of discrimination early and in a non-adversarial manner, and particularly:

- **public education on the importance of human rights, the history of protections of particular grounds, Canada's international human rights commitments and the protections set out in the Code;**
- **education for employers, landlords and service providers to inform them about the importance of human rights and the general nature of their obligations under the Code; and**
- **interpretive guidelines that provide guidance on the legal application of the Code in specific situations to support early and non-adversarial solutions to situations of discrimination.**

SYSTEMIC INEQUALITY

CMHA BC recommends that the commission be empowered to:

- **research, monitor, and take action to eliminate systemic inequality in BC, including discrimination already prohibited under the Code, but also emerging patterns of inequality and violations of international human rights instruments to which Canada is a signatory;**
- **make recommendations to the provincial government and other provincial institutions in order to eliminate systemic inequality; and**
- **initiate systemic complaints and intervene in complaints to assist with systemic issues.**

ACCESS TO JUSTICE

CMHA BC recommends that BC's human rights system provide adequate legal information, advice and representation to those who experience discrimination.

ABOUT CMHA IN BC

OUR VISION: mentally healthy people in a healthy society.

OUR MISSION: As the nation-wide leader and champion for mental health, CMHA facilitates access to the resources people require to maintain and improve mental health and community integration, build resilience and support recovery from mental illness.

OUR MANDATE AND SCOPE: In BC, mental health, substance use and addictive behaviours are within scope of the Association.

OUR KEY VALUES AND PRINCIPLES

- Embracing the voice of people with mental health and substance use problems
- Promoting inclusion
- Working collaboratively
- Influencing the social determinants of health
- Focusing on the mental health needs of all age groups
- Using evidence to inform our work
- Being transparent and accountable

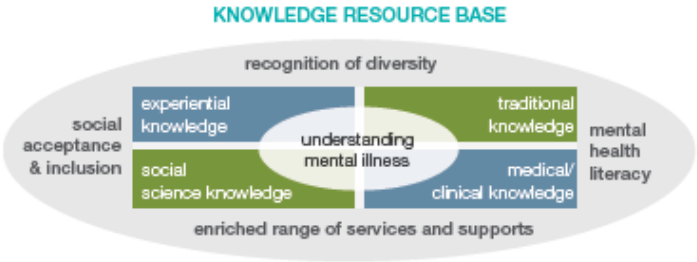
CMHA BRANCHES IN BC

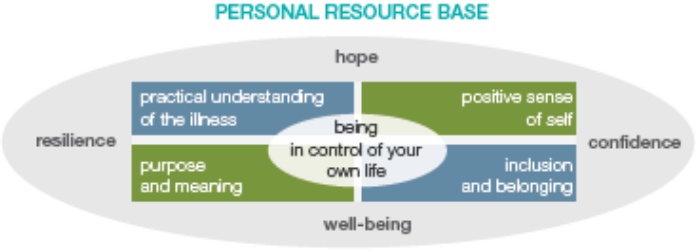
CMHA has a network of 14 branches in BC that are separate legal entities that provide services to over 100 BC communities: Cariboo Chilcotin (Williams Lake); Cowichan Valley (Duncan), Kamloops, Kelowna, Kootenays (Cranbrook), Mid-Island (Nanaimo), North and West Vancouver (North Vancouver), Port Alberni, Prince George, Shuswap-Revelstoke (Salmon Arm), South Cariboo (100 Mile House), South Okanagan Similkameen, Vancouver-Fraser (Delta and Vancouver) and Vernon.

The CMHA BC office covers areas of the province where there is no local branch, for example, the Greater Victoria Regional District.

FRAMEWORK FOR SUPPORT

The Framework for Support is the central philosophy guiding the activities of CMHA. This philosophy holds that the person experiencing mental health or substance use problems is at the centre of any supportive mental health system. The Community Resource Base outlines a range of possible resources in addition to the formal mental health system that can provide support to a person with mental illness. Housing, income, work and education represent four basic elements of citizenship. The ultimate goal of the Framework is to ensure that people with mental health and substance use problems live fulfilling lives in the community.





INTRODUCTION

People with mental health and substance use problems[1] continue to experience significant economic and social disparities in BC and in Canada. They experience higher rates of unemployment, poverty, homelessness, housing insecurity, incarceration, police involvement, and stigma than those without mental health and substance use problems.[2] Almost 40% of people with mental health conditions report being discriminated against or treated unfairly, a rate that is more than three times higher than reported rates for people without mental health problems.[3] Further, research suggests that people with substance use problems experience higher rates of stigma than those with any other health condition.[4]

The stigma and discrimination experienced by people with mental health and substance use problems can take different but interrelated forms. Social stigma causes individuals to act at a personal level in a harmful or exclusionary manner toward others on the basis of a particular trait that they find to be contrary to community norms; this can lead to acts of individual discrimination. Structural stigma "refers to the rules, policies, and practices of social institutions that arbitrarily restrict the rights of, and opportunities for, people with mental health issues;" it is not enacted by individuals but instead as embedded parts of our institutional systems.[5] Put simply, structural stigma is reflected in laws, policies and institutional practices, including those that frame income support schemes, housing laws, healthcare systems and other public services, which arbitrarily exclude or devalue people with mental health and substance use problems and can amount to systemic discrimination.[6]

Stigma not only undermines self-worth, but we also know that it results in barriers to employment, housing, health services and equal access to other public services. Further, we know these barriers are heightened for people who experience multiple forms of exclusion, particularly racialized and Indigenous people. Various international human rights instruments recognize the complex identities and rights of people with mental health and substance use problems, including:

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[1] This submission uses the term "mental health and substance use problems" to encompass the full continuum of conditions from mild problems to severe disorders.

[2] See for example, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, "Breaking the Cycle: A Study on Poverty Reduction" (2017); Canadian Population Health Initiative of the Canadian Institute for Health Information, "Mental Health, Mental Illness, & Homelessness in Canada" (2009); Correctional Service Canada, "National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men" (2015); Correctional Service Canada, "Mental health needs of federal women offenders" (2012).

[3] Mental Health Commission of Canada, "Informing the Future: Mental Health Indicators for Canada" (2015) at 55.

[4] JD Livingston et al, "The effectiveness of interventions for reducing stigma related to substance use disorders: a systematic review" *Addiction* 107(1) (2012) at 39-50.

[5] JD Livingston, "Mental Illness-Related Structural Stigma: The Downward Spiral of Systemic Exclusion Final Report" (Mental Health Commission of Canada: 2013).

[6] Ibid.

- the *Convention on the Rights of Persons with Disabilities*, which provides broad protections to people with disabilities and recognizes that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis," among many other protections;

- the *International Covenant on Economic, Social and Cultural Rights*, which protects the right to an adequate standard of living including adequate food and housing, the right to work, the right to education, and the right to the highest attainable physical and mental health, in addition to other rights;

- the *International Covenant on Civil and Political Rights*, which enshrines the right to be free from arbitrary detention and, if a person is detained, the right to be treated with dignity and humanity during detention, in addition to other rights;

- the *Convention on the Rights of the Child*, which protects the rights of children to develop to their full potential, the right to an adequate standard of living, the right to health and educational services, and the right to achieve the highest attainable standard of health, as well as the right of children with disabilities to a full and decent life with dignity, in addition to other rights;

- the UN *Declaration on the Rights of Indigenous People*, which protects the rights of Indigenous people to achieve the highest attainable standard of physical and mental health, the right to practice traditional health approaches, and the right to be actively involved in the development of social programs than impact them, including health services, in addition to other rights;

- the *International Convention on the Elimination of All Forms of Racial Discrimination*, which protects the rights of racialized people to equal access to housing, healthcare and other public services, among other rights; and

- the *Convention on the Elimination of All Forms of Discrimination Against Women,* which protects the rights of women to have equal access to healthcare services and to be free from gender-based violence, which can negatively impact mental health, as well as other rights.

In this context, re-establishing a human rights commission in BC is particularly important to people with mental health and substance use problems.

The original purposes of the *Human Rights Code*, and particularly the ways in which those purposes are not being achieved under the current human rights system in BC, provide a strong foundation to direct the scope and mandate of a new commission. These purposes are:

a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

c) to prevent discrimination prohibited by the *Code*;

d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by the *Code*;

e) to provide a means of redress for those persons who are discriminated against contrary to the *Code*;

f) to monitor progress in achieving equality in British Columbia;

g) to create mechanisms for providing the information, education and advice necessary to achieve the purposes set out in paragraphs (a) to (f).[7]

With these purposes in mind, CMHA BC makes the following recommendations for the structure and functions of the commission.

EDUCATION

In order to fulfill the purposes set out in sections 3(a), (b) (c) and (g) of the pre-2003 *Code*, education must be a key part of the commission's mandate. CMHA BC suggests that the educational mandate of the commission should take three distinct approaches:

- First, the commission should provide broad public education on the importance of human rights, the history of protections of particularly grounds, Canada's international human rights commitments, and the general protections set out in the *Code*. Such education should be incorporated into the public education curriculum as well as other public facing mechanisms.

- Second, the commission should provide targeted education for employers, landlords and service providers (and to any professional associations or other bodies that may be able to distribute the information) to educate them about the importance of human rights and the general nature of their obligations under the *Code*.

- Third, the commission should develop interpretive guidelines that provide guidance on the legal application of the *Code* in specific situations. These guidelines can and should play a crucial role in preventing discrimination or remedying it early on by providing a clear and objective statement of the law that can be provided by individuals to an employer, landlord or service provider who is unaware of their obligations in a particular situation.

The current system, which focuses on remedying acts of discrimination through litigation that offers a potential remedy many months after the fact does little to reduce stigma against marginalized people. While binding adjudication is and will continue to be an important part of the human rights system, **CMHA BC urges BC to structure the commission's functions to prioritize preventive and responsive education that reduces stigma and supports resolving situations of discrimination early and in a non-adversarial manner.**

[7] *Human Rights Code*, s. 3. While ss. 3(f) and (g) were repealed in 2003, we suggest that those purposes are necessary to the meaningful protections of human rights in BC.

SYSTEMIC INEQUALITY

In order to fulfill the purposes set out under sections 3(d) and (f) of the pre-2003 *Code*, the commission must be able to research, monitor, take action to eliminate different forms of systemic inequality in BC, including discrimination already prohibited under the *Code*, but also emerging patterns of inequality and violations of international human rights instruments to which Canada is a signatory.[8]

Further, the commission must be able to make recommendations to the provincial government and other provincial public bodies in order to achieve these purposes. The ability to research, monitor and make recommendations to address patterns of systemic inequality is especially important to people with mental health and substance use problems who experience structural stigma that is institutionalized in provincial laws, policies and practices.

Finally, in order to fulfill the purposes set out in sections 3(d) and (e) of the pre-2003 *Code*, BC's human rights system must be able to provide meaningful and binding redress in response to systemic discrimination, even in complex cases. Given that most individuals are not in a position to bring a systemic human rights complaint themselves, the commission should have the power to initiate systemic complaints and intervene in complaints to assist with systemic issues.

ACCESS TO JUSTICE

Finally, to fulfill the purposes set out in sections 3(e) of the *Code*, BC's human rights system must provide meaningful and accessible remedies to those who experience discrimination that cannot be resolved informally. Like many members of protected groups, few people with mental health and substance use problems are in a position to hire a lawyer to enforce their rights or represent themselves to bring a complaint, a stressful, complex and adversarial process. In order for the protections in the *Code* to have meaning for all people, BC's human rights system (although not necessarily the commission) must provide adequate legal information, advice and representation to those who experience discrimination.

[8] For a more fulsome discussion of these functions, see Gwen Brodsky and Shelagh Day, "Strengthening Human Rights: Why British Columbia Needs a Human Rights Commission" (Vancouver: The Poverty and Human Rights Centre and Canadian Centre for Policy Alternatives - BC Office, 2014).

Dr. Nancy Hall Speaking Up Speaking Out Fund

MAKING A DIFFERENCE BY INFORMING PUBLIC POLICY

Nancy Hall was a health researcher, educator, mediator, writer, presenter, and most importantly a friend and a voice with and for people with a mental illness. She had the courage and conviction to expect governments and communities to do the right thing for their citizens.

Nancy was a longtime friend and advocate of the Canadian Mental Health Association and with encouragement from us and others she applied for the position of Mental Health Advocate. She was the first and only advocate appointed by a Minister of Health in BC. Nancy took the 18 month position in August 1998 and the position ended in 2001.

When Nancy passed away in 2011, the Canadian Mental Health Association created the Dr. Nancy Hall Speaking Up Speaking Out Endowment Fund. It is named in her honour for the voice she brought to the Canadian Mental Health Association by speaking out on issues, assisting with policy papers, presenting at inquiries and just being available as a trusted advisor. Her energy was tireless and her enthusiasm was infectious. Over the last decade Nancy had worked on many projects for the Canadian Mental Health Association and her contribution will live on in this endowment.

The Association has committed to growing the endowment to $1 Million. The Fund will support the Canadian Mental Health Association's continued work in public policy and systemic advocacy at the provincial level and provide an informed independent voice on the impact of the public mental health system on the lives of people with mental illness and substance use problems and their families.

The Canadian Mental Health Association also established an annual provincial award—the Dr. Nancy Hall Award for Public Policy Leadership. The award recipient is honoured at the BC Division annual meeting and a $500 gift designated for the recipient's charity of choice.

You can read more about Dr. Nancy Hall's work and legacy at www.cmha.bc.ca/nancy-hall