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2008 Mental Health Conference

*Put Our Minds to Work: Re-thinking Mental Health
and Illness in the Workplace*

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Conference Proceedings

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Morning Keynote Address

Re-thinking Mental Health and Mental Illness in the Workplace

SPEAKER

Mary Ann Baynton
Director, Mental Health Works
Canadian Mental Health Association (CMHA)

Mental health issues in the workplace can range from distress to trauma to illness, said **Mary Ann Baynton**. Fear and ignorance dominate the response to mental health issues, even though the less blame or shame that is attached to these issues, the more successfully they can be addressed.

When a person's behaviour triggers an emotional response, it is important to recognize the extent to which the reaction is attributable to that person's behaviour versus the responder's prior experiences.

Behaviours such as missed deadlines, absences, and outbursts represent the tip of the iceberg of what someone is feeling. Less apparent are underlying feelings about unmet needs for recognition, belonging, autonomy, and stability.

Baynton showed a video of a woman named Donna, who felt paralyzed during a performance review. While the manager saw her behaviour as defensive, confused, and angry, in reality her behaviour was caused by her fear of being judged and her unmet need for belonging.

To help meet the needs of someone like Donna, an employer can use strategies such as validating her work prior to the review, acknowledging her anxiety, and focusing on her need for acceptance and recognition. Support and understanding not only help individuals be productive, but also provide a culture where accommodation is perceived positively, said Baynton.

She proposed a holistic understanding in the workplace that encompasses co-workers' responses, supervisors' skills, union influence, accommodation, education, awareness, conflict resolution, and performance and communication issues.

Baynton suggested posing three questions to open up discussion with employees who have mental illness:

- "What do you need from the workplace to be successful in your job?" Solutions might include flexible time, a different way to give instructions, or a different method of following up on assignments.
- "For you to contribute towards a successful plan, what are you willing to commit to?"

The discussion must emphasize commitment, insight, and personal control versus compliance, blame, and “favours.”

- “How do you want future workplace issues to be addressed?” Clarity gives everyone a defined path forward.

Baynton encouraged everyone to be aware of their own triggers, to consider the needs underlying behaviours, to focus on holistic workplace solutions, and to address the issues objectively.

Discussion

Asked about human rights laws with respect to mental health issues, Baynton said they will only succeed in workplaces that have the motivation to address the issues. Meanwhile, tools and resources are available to help employers make a difference without resorting to legal means. She suggested focusing on solutions and abilities rather than problems and disabilities. She said that while there is no legal requirement to disclose, disclosure can facilitate finding solutions in a safe workplace environment.

Concurrent Workshops 1

Getting the Job in the First Place

MODERATOR

Debra Simms
Analyst, Economic Inclusion and Security
Office for Disability Issues (ODI), Human Resources and Social Development Canada (HRSDC)

PANELISTS

Alison West Armstrong
Disabilities Counsellor, Centre for Students with Disabilities
Algonquin College

Don Palmer
Executive Director
Causeway Work Centre

Nicola Benton
Co-facilitator
CMHA-Ottawa Photovoice Project: “Working with the Whole Picture”

Alison West Armstrong said she works mainly with students who have psychiatric disabilities, helping to devise accommodations and modified programs for them at the school and supporting their transition to the workforce.

Looking for a job is the same process for everyone, said Armstrong, and developing a realistic job search profile helps to meet that challenge. A basic profile includes career goals, location, transportation, money, hours of work, and accommodation requirements.

A student's school program may point to certain well-defined careers, but the ultimate goal of meaningful employment is not always a full-time job. Other options include part-time work, self employment, or a different career direction.

Two key factors to consider regarding job location are whether a student can relocate and whether there is a support group in the area. For students without their own transportation, drawing a "job search circle" on a map highlights how far they can walk or how far public transportation, including ParaTranspo, can take them. Some students may not be able to work weekends, travel in the dark, or take crowded public transportation during rush hour.

Flexible work hours may be required by those on medication.

Students receiving disability support payments, Canada Pension Plan (CPP) disability benefits, or employment insurance benefits need to consider how the job will affect their eligibility, income, and housing.

Armstrong said disclosure and accommodation are the bigger issues. Disclosure has advantages, but whether and how much to disclose must be based on a student's comfort level. She suggested practicing prior to interviews. Accommodation requirements may include flexible hours, reduced hours, or work-from-home arrangements.

Don Palmer noted that the Causeway Work Centre uses the Village Model of service delivery. Causeway believes that people with mental illness have good and bad periods and that support mechanisms must be adjusted accordingly.

Causeway works with both employers and job seekers and provides on-site job training and follow-up support. Among its 13 programs, 12 are geared toward employment or pre-employment. Three programs involve businesses—Krackers Katering, Good Nature Groundskeeping, and Cycle Salvation—designed to employ people with mental illness and other disabilities who wish to start their own business or work in small, supported environments. Last year these businesses employed 105 people.

After nearly 30 years of operation, Causeway has found that stigma is the biggest barrier to employment. Employers mistakenly assume that people with mental illness are dangerous or cognitively impaired and many are unaware of available support services. Ignorance also persists around the costs of accommodation, which are generally under \$500 for most disabled people and often much less for the mentally ill.

Many people with mental illness have limited education and work history and need to upgrade their training to find employment. Other barriers to employment include poverty, substance

abuse, fear of self-disclosure, criminal records, dependence on benefits, and difficulties accessing transportation and job postings.

Palmer advised being practical and pragmatic in setting career goals. There are organizations that focus on developing strategies to overcome barriers. Causeway is trying to promote an American-based supported employment model aimed at helping people return to school by providing tutors, helping with exams, and negotiating accommodations with professors.

Causeway is working with the Canadian Mental Health Association (CMHA) and other organizations to educate employers and workers on mental health and disability issues. Causeway also has a Social Purchasing Portal that is designed to help employers access the disabled workforce.

Armstrong said Algonquin College finds that work placement is a good way to reach employers and provides excellent opportunities for students to explore their options.

Nicola Benton said CMHA-Ottawa's photovoice project, "Working with the Whole Picture," uses personal narratives and photos for social advocacy and education. Ten participants with mental illness took photos of what they lived, saw, and experienced regarding employment. The diversity of perspectives was amazing, Benton said, as were the hope, strength, dedication, resilience, and mutual support displayed by the group.

Benton noted her own "monumental steps from volunteering to a paid position." It is not just about working, she said. It is also about leaving behind crippling social and physical isolation and accessing opportunities to make connections in the working world.

Project participant **Mary Hill** displayed her photo of a lone boot, entitled "Where is the other boot?" Without a job, one can only afford one boot, she said. Another photo, "Rotting away," depicts a decaying tree patched with cement. While the tree portrays hopelessness and worthlessness, Hill said, the cement represents her hopefulness. Another photo of two of Hill's blouses signifies that nice clothes make her feel good about herself. It also speaks to the fact that one must dress appropriately to attend interviews and go to work.

Hill described herself as a natural speaker with good communication skills who can chair meetings and work with groups. She said she hopes the project can help her re-enter the workforce.

Project participant **Shaughnessy Muldoon** showed a photo of his dog, Emily, trying to reach some crumbs on the table. He said this is the same persistence and determination people with mental illness need to find a job.

Diagnosed with schizophrenia at 18, Muldoon left school without a degree. He took paid training and became certified in computer installation and repair. After some seasonal work, he has been unable to find another position. He said medication has helped to reduce his anxiety

and he is now persisting in his job search by returning to his study of computational geophysics at school.

“Working with the Whole Picture” will be holding an exhibit at Ottawa’s IPO Gallery from January 8 to February 6, 2009.

Discussion

Asked for statistics on disabled students at Algonquin College, Armstrong said among the 1,300 disabled students registered, approximately 250 list mental illness as their primary disability. Disabled students graduate at the same rate as other students. However, students with psychiatric disabilities are more likely to drop out if difficulties arise.

A participant asked about awareness of disability services among new Canadians.

Causeway does serve some new Canadians, said Palmer, but this group needs greater outreach given the additional barriers of language and culture, and the possible insularity of their communities’ attitudes toward disability.

Mental illness is approached differently in different cultures, Armstrong said, and new Canadians tend to be more reluctant to use disability services. When new Canadians come to her office, she congratulates them for their courage and proactive behaviour. She said there is an increase in the number of new Canadians who seek out services.

One of Armstrong’s colleagues said a psychiatrist who works out of a hospital outreach program provides services at Algonquin College once a week.

A participant asked for strategies to help job seekers stay motivated.

Job search can be a long process, said Palmer. Many people need money immediately and do not want to do volunteer work. As a bridge to more permanent work, he suggested taking available jobs even if they may not be one’s ultimate career goal.

Motivation needs forward movement, Armstrong said. Tangible results such as a list of contacts made, courses taken, and resumés sent can help jobs seekers focus on the positive things they have done.

Hill said networking and other benefits of volunteering gave her energy and rebuilt her motivation during times of desperation.

Armstrong noted that Algonquin College offers a peer mentoring program.

Palmer said getting an interview is like getting a job. It shows someone is on the road to succeeding, demonstrating capabilities, and putting a plan into action.

Money, proper clothing, and transportation are constant challenges, said Hill. She encouraged people to not give up.

A participant said it is important to lobby members of Parliament for an infrastructure that maintains benefits for a trial period after a person starts a job. Policies should also recognize that people can no longer live on minimum wage. She suggested having all services and programs under one umbrella.

Another participant said the Community Information Centre of Ottawa has an online Blue Book directory of community services.

A participant noted that the stress involved in searching online can be overwhelming for some.

Another participant suggested more coordination among agencies to allow better access to support from multiple places.

Knowing Your Human Rights

MODERATOR

Renée Ouimet
Director, Capacity Building and Education Division
Canadian Mental Health Association, Ottawa Branch

PANELISTS

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Partner
Raven, Cameron, Ballantyne & Yazbeck, LLP

Phillippe Dufresne
Director and Senior Counsel, Litigation Services Division
Canadian Human Rights Commission (CHRC)

Michael Gottheil
Chair
Human Rights Tribunal of Ontario

Alison Dewar said there are “pretty tough times” ahead in the courts’ approach to human rights and accommodation. It is “one thing to know your human rights and another thing to exert them and have them recognized.” Historically, exerting these rights has been difficult given the enormous backlog in the system resulting in lengthy waiting times. Dewar said the problem is not due to a lack of will but to a lack of resources and the fact that adjudication of the rights themselves sometimes takes a long time. These impediments can be a source of great frustration.

Human rights’ entitlements depend upon jurisdiction. In Ottawa, rights are governed by either the *Ontario Human Rights Code* or the *Canadian Human Rights Act (CHRA)*, which have many

commonalities. Dewar noted that not all problems of harassment or bullying engage human rights. Moreover, it is important to know the limits placed on one's rights. She gave the example of affirmative action plans that require differential treatment in certain situations but are not considered to be discriminatory against majority rights.

Turning to the issue of recourse in the face of a rights' violation, Dewar said, "To have any disability in this culture means that one is constantly facing and bumping into real and supposed barriers." The legal process is only one possible avenue for dealing with these issues. When deciding whether to pursue legal action, it is necessary to consider the nature of the discrimination and whether there is adequate evidence to prove the violation. "Good evidence is key." If there is such evidence, Dewar suggested filing an Access to Information Request Form, saying "It is shocking what kinds of things will come back."

Once the evidence is gathered, different options can be explored. In Ontario, one has the option of going to court or directly to the Human Rights Tribunal. Unionized workers can go through the grievance process. Dewar said it is difficult to ascertain the best option because the Ontario system has changed recently. She advised participants to grieve the violation if unionized. Otherwise, they should go to the Tribunal, or, at the federal level, the Canadian Human Rights Commission (CHRC).

Philippe Dufresne said the CHRC "wears many hats." It not only screens complaints and decides whether they go to trial, but it also has a policy and regulatory mandate. In its role as a "human rights promoter," the CHRC works with employers to reduce the number of complaints and "to ensure the full inclusion of all Canadians." The CHRC not only explains the law to employers, but also appeals to both their moral and pragmatic duty, arguing that full inclusion is in everyone's best interests.

When a complaint is filed the CHRC works "strongly with the parties at the front end to see if cases can be settled." For those that cannot be settled, the CHRC performs a "triage" to determine the order in which they should be addressed. The CHRC tries to balance speed with procedural fairness and is always mindful of timeliness. Although the Commission has difficulty reducing delay in some instances, cases now take an average of eight months from the filing of the complaint to the decision—a significant improvement from five years ago.

Turning to the Supreme Court's recent decision, *Hydro-Québec v. Syndicat des employées de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000*, Dufresne said he disagreed that it is, as some have described it, "a step back for human rights." In this case, the court looked at the "undue hardship" test and reinforced an approach that rejects rigid rules and mandates that the parties engage in dialogue.

"It is fundamental that both employers and employees and unions sit down and have an open mind and consider all of the available, reasonable options," Dufresne said. Hydro-Québec had

engaged in this process and had tried to accommodate its employee; it “had been open-minded in making changes to the workplace.”

Dufresne said there are three lessons to be learned from the case law culminating in Hydro-Québec. First, process is fundamental. A good process reduces the likelihood of a complaint and, if there is a complaint, the party “that has been most reasonable and fulsome is most likely to prevail.” Second, context is key. Different rules and different situations will lead to different outcomes. Third, one must beware of absolutes. A hard-line approach will put an employer in a difficult position.

“The duty to accommodate is alive and well, and is a fundamental part of the human rights landscape in Canada,” said Dufresne.

Michael Gottheil said the Human Rights Tribunal of Ontario (HRTO) receives applications, adjudicates, and mediates cases that fall under the Ontario *Human Rights Code*. Under the new system, in place since June 2008, complaints are no longer initially dealt with by the Ontario Human Rights Commission (OHRC), but are filed directly with the Tribunal. The OHRC now focuses on advocacy and policy. The new system also includes a Human Rights Legal Support Centre that provides advice, support, and representation to applicants.

When developing the new system, the HRTO “did a lot of work to ensure that its process and complaint process are accessible,” based on a set of core values: accessibility, fairness, timeliness, transparency, and the opportunity to be heard.

The first step of the process is the completion of a detailed, step-by-step application form that was developed in consultation with various groups representing a variety of disability communities. Although lengthy, the application form is meant to be helpful and was designed “to assist people to be able to articulate their story.” The form also helps people identify whether they are applying to the proper tribunal.

Once the HRTO has accepted and reviewed the application, mediation is offered. The mediation process has been designed to include a significant listening component. Applicants “want action or results, but they also want someone to listen to them. Our mediation is built around this approach.” If the case does not settle, it goes to a hearing. In this hearing, the only issue the Tribunal considers is whether the employer has taken the proper steps to accommodate. The Tribunal “has a fair amount of power to focus the hearing.” These steps—the application form, the mediation process, the active hearing model—were developed to enhance access to justice by allowing people to participate in an informed way.

Discussion

A participant asked whether the statute has a time limit. Dufresne said there is a one year time limit at the federal level although the Commission can choose to extend that limit. Gottheil said the situation is essentially the same in Ontario.

A participant asked Dewar to comment on the fact that those with mental illness are often perceived as lacking credibility. Dewar said her firm often deals with cases where an employee has a mental illness but is perceived as merely difficult to get along with. Even with strong medical evidence that someone has a mental illness, a judge still may not accept its existence. "Issues around psychiatric disabilities and issues around mental disabilities are just not understood, and I think that that is one of the hardest, hardest barriers to break through legally at the moment."

Gottheil noted that the OHRT addresses privacy concerns. Alternative contact information can be given when submitting an application if one does not want to give one's own information. Also, it is now possible to file an application on behalf of another person. For example, a mental health worker can file an application on behalf of an individual or a group of people who are not able to do so themselves.

The Employer's Duty to Accommodate

MODERATOR

Paula Agulnik
Executive Director
Reach Canada

PANELISTS

Carole Willans
Former Co-chair
National Council of Federal Employees with Disabilities

Raquel Chisholm
Associate
Emond Harnden, LLP

Carole Willans said accommodation is about intelligently balancing the employer's right to a productive worker and the employee's right to dignity and physical integrity.

The medical certificate's content is a recurring issue. The employer needs enough information to plan the employee's return to work date, to confirm the disability, and to determine whether the employee can resume duties and what accommodation is required. The employer is not entitled to a diagnosis, as this would infringe on the employee's privacy rights.

To illustrate the issues surrounding when it is in the employee's interest to disclose a disability, Willans told of her own experience searching for an articling position after law school in 1981. So many firms turned her away after she disclosed her deafness that she decided to hide it. She then had to deal with the stress of hiding it, until people noticed. When she lost her job, it took her a year to find another.

"Disclosure facilitates support, releases tension, and helps co-workers react properly in a crisis," she said. The more open the work environment, the better the situation. Willans said the rise in the number of people with disabilities in the workplace is slowly changing attitudes. "We have to continue education to get past stereotypes, preconceptions, and stigmas."

The National Council of Federal Employees with Disabilities focuses its efforts on middle managers as they are the ones who tend to recruit and handle career progression. Willans recommended visiting Justice Canada's new website on the duty to accommodate and exploring the resources and technology offered by local community groups and organizations such as Reach Canada.

Willans said return-to-work planning should be at the core of every business and should include strategies for keeping the absent employee connected. The longer an employee is away, the harder it is to return. She suggested small measures such as keeping the employee up to date on changes in the workplace during his or her absence.

Accommodation does not end once the employee is back in the workplace. Employers should ensure that the workload is not excessive and is distributed evenly in the event of an absence. This will reduce potential hostility, backlash, and negativity towards the returning employee who should be given meaningful employment. Willans said unions could help with this.

Employees are valuable workers whether or not they require accommodation, especially in these days of a dwindling workforce, said Willans. Employers must include equity in their programs through such measures as ensuring good career progression—the primary factor in employee satisfaction. It can be very discouraging for employees with poor mental health to see others promoted instead of them. In general, and to avoid this type of situation, managers should ensure that the accommodation remains as effective as it was when the employee returned to work. Accommodation is an ongoing process that is facilitated by a manager's awareness of the employee's skills and functional abilities.

To attain this awareness, managers should ask the employee what he or she needs, or, if the disability is a new one, it may be advisable to ask an expert instead. Having lost her hearing as a result of an accident when she was four years old, Willans said she has gained experience of certain technologies and what works for her and she would prefer to be asked about her needs. On the other hand, someone with a new disability may not have acquired that level of knowledge and could be suffering additional stress from the return to work.

“Accommodation is on a case-by-case basis even if others have a similar disability. Apply common sense. Be informed. Be prepared to be wrong.”

“We are in a labour crunch,” said **Raquel Chisholm**, “so we need to keep people in the workforce and benefit from their experience and skills.” Accommodation reduces the cost of absences, replacements, disputes, and terminations. Above all, it is the law.

Employers make minor accommodations every day, said Chisholm. If an employee breaks an arm, nobody asks for a medical certificate because the situation is obvious and temporary. The employer sees the cast, autographs it, and helps the employee get on with his or her job. Employers have the legal obligation to accommodate permanent disabilities as well, although sometimes they make this more complicated than it needs to be.

Chisholm cited a client whose manufacturing plant produced small pieces of very expensive equipment. The employer was concerned that an employee returning after extensive back problems would drop the equipment as he carried it across the room. Chisholm suggested buying the employee a small trolley and the story ended well. “People think the problem is huge, but it isn’t always.”

Employers must work at accommodation until they are convinced that it is impossible for them to accommodate the employee any longer and impossible for the employee to be productive, although not necessarily in their original job.

While the employee is responsible for asking to be accommodated, the employer cannot turn a blind eye if the employee does not make a request. A manager who identifies a significant change in behaviour, performance, or absenteeism is obliged to address the situation. Tribunals will chastise employers who were aware of a situation and ignored it.

Legally, the accommodation process is as important as the accommodation itself. The employer has a legal obligation to ask for expert advice when needed. In the event of a dispute, the courts want to see that the employer has asked questions, involved people, and made an effort. Should the employee lose his or her job and the process has not been adequately completed, the employer is liable, even if the employee would have lost his or her job with accommodation.

Employees are required to cooperate with accommodation activities, such as attending meetings, answering questions, providing information about restrictions, facilitating the employer’s ideas, and generally being a part of the process. Once accommodated, they must meet the standards that were agreed upon and collaborate with the employer on an ongoing basis to either confirm that all is going well or to make changes.

The employee must provide a medical certificate. Although it should contain no personal information, such as a diagnosis, the employer is legally permitted to have one to determine if an employee is cleared to return to work. The certificate may contain information such as restrictions, so that particular tasks do not exacerbate any injury or illness; guidelines for a

graduated return, such as part-time every day or three to four full days a week; and a return to work date.

Employers only need information relevant to accommodation, said Chisholm. "Limit the collection of information to your purpose. If you don't need it, don't ask for it. You don't need to know why a person is ill. You want to know what he or she needs in order to work and when that person will be back on the job."

She also advised against accepting medical certificates that contain an indeterminate period of disability and said it was acceptable to ask for clarifications, especially in cases where the certificate encourages an accommodation that would be unproductive for the employer. Chisholm said a certificate stating a return to work date of three months is fine, as is one that specifies a four-day work week. However, a certificate that specifies working between the hours of 8:30-12:30 is not acceptable because only the employer knows at what time of day the employees are most needed. Construction, for instance, would favour an early start whereas a restaurant would prefer later hours.

Throughout the process, if an employee fails to provide necessary information, the employer may be released from its legal obligations.

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Concurrent Workshops 2

Challenging Stigma in the Workplace

MODERATOR

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President
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Senior Counsel
Justice Canada

PANELISTS

Katherine Kersteins
Headstrong Ambassador—Ottawa Region
Mood Disorder Association of Ontario

Kelly Mertl
Manager, Recruitment
TD Canada Trust

Judy Middlemiss
Manager, Workplace Health
Canada Post

Katherine Kersteins listed some of the common perceptions that society has about people with mental illness: “Violent, crazy, stupid, dumb, lax, dishonest, addict, homeless.”

Approximately 8% of adults will experience major depression in their lives. About 1% of Canadians will experience bipolar disorder. Schizophrenia affects 1% of the Canadian population. Anxiety disorders affect 12% of the population. According to a 2002 Canadian report, *A Report on Mental Illnesses in Canada*, 20% of Canadians will experience a mental illness in their lifetime, while the other 80% will know someone with a diagnosed mental health issue.

These statistics show that these harmful words affect every person in the room, said Kersteins. They affect self-esteem and make people feel unease, shame, guilt, and fear. It makes a person ask, “Am I good enough? Do I belong? If I am not valued as a human being, how can I be valued as an employee?”

Stigma is pervasive. Employers have a key role to play in creating a positive and supportive workplace for people with mental illness. Morally, legally, and ethically, it is the right thing to do, Kersteins said. Both employers and employees stand to benefit from reduced tension, improved communication, better teamwork, and increased productivity.

Kersteins presented a three-step plan for employers:

- **Analyze the issue.** If it is an individual issue, deal with it one on one. If it is a systemic or group issue, deal with it through policy or education. Policy solutions may require time and

expense, whereas education is easier to implement.

- **Plan and offer the education, set behaviour expectations, define consequences, and follow through.** Employers must lead by example and promote healthy attitudes and conversations. The individual with mental illness should not be the one to have to educate others.
- **Perform an evaluation to determine whether the environment has improved.** One measure is to track the increase or decrease in productivity and sick days.

Kelly Mertl said the key to overcoming the stigma attached to mental illness is to foster an inclusive environment where employees feel comfortable and proud to work for the company. In turn, such a workplace creates a comfortable environment for customers.

The issue comes down to having an environment that allows employees to share their situation with their supervisor and ask how they can work together to address it. Communication is absolutely vital, and a comfortable environment is the prerequisite, said Mertl.

TD Canada Trust is committed to raising awareness of mental health issues and finding ways to support employees and customers who may have those issues. It works both ways, she said. The employer must be open to having discussions and have support in place, and employees must feel comfortable having the discussion. Commitment starts with the corporate leadership team.

Mertl gave an example of giving support to a member of the Ottawa human resources team. Joan disclosed that she has an anxiety disorder and the team promised to support her. She needs a routine to have a comfortable day. Recently she missed her morning bus. When she got on the next bus, her usual seat was taken, and she had to sit in a different seat between two strangers. Upon arriving at work, Joan was visibly shaken.

A teammate, Kathy, knew Joan was distraught and brought her to a quiet room. She asked what happened, and Joan explained. Kathy told her it was a great success that she made it to work, sitting between those two people, and was something Joan never would have been able to do six months ago. Joan agreed, saying she wanted to be at work because everyone understands her. She is now able to sit in a different seat and this is a significant accomplishment for her, said Mertl.

Judy Middlemiss noted that Canada Post is the largest employer in Canada, with 60,000 full-time and 10,000 casual and temporary employees.

She said president and CEO Moya Greene has been instrumental in moving mental health onto Canada Post's agenda. In October 2007, Greene announced that Canada Post's cause of choice would be mental health. The Canada Post Foundation for Mental Health was created, setting the target of raising \$1 million in 2008 for patient care, research, and other mental health work. The money will be put back into the community beginning in 2009.

Canada Post's mental health strategy for employees aims to increase understanding of and destigmatize mental illness, offer resources for screening and detection, encourage follow-up care and support, and promote mentally and physically healthy lifestyle behaviours.

The strategy has three components: a team leader's handbook, an employee booklet, and an intranet page.

Team leader training uses a handbook developed by the Conference Board of Canada entitled *What You Need to Know About Mental Health: A Tool for Managers*. It provides basic information on preventing and recognizing mental health problems, getting help, and returning to work.

A handbook developed by the CMHA, entitled *Understanding Mental Illness*, has been sent to all employees. It covers topics such as myths and facts, depression, anxiety, and the link between physical and mental health.

A "Your Mental Health" page on the company website provides links to useful external resources on health check-ups, stress management, addiction, and other subjects.

Canada Post has been a Platinum Plus sponsor of Mental Illness Awareness Week for two years. This year the company's employee assistance program (EAP) provider held wellness seminars at major plants across Canada. Various community mental health groups also hosted booths.

Canada Post's plan for 2009 includes further team leader training, shift work support, addictions awareness and support, health risk prevention, and healthy lifestyles promotion and support.

Discussion

A participant commented that wellness is often measured by fewer sick days, whereas in her view, wellness is when people use their sick days wisely by taking time off when they know they need to do so.

Mike Sousa said it is a question of how to shift that perspective, and employers and unions are major players in this area.

Mertl said society has much to learn about supporting one another. Education is a crucial component, especially having a collaborative audience with employers and healthcare professionals.

Kersteins said if something is not expected from an employee with a physical illness, it should not be expected from an employee with a mental illness.

A participant said she has her manager's approval to take every Wednesday afternoon off for her appointments. One participant suggested making up for that time if it would exceed the

permitted number of sick days. Another participant said that would place undue stress on the employee, as would docking that employee's pay.

Sousa said it should depend on the workplace structure and on changing that structure to make it a level playing field for both mental and physical illness.

A participant who suffers from depression said that a bit of disclosure can help to dispel stigma. Once he told others about his situation, people became less distant to him.

A participant asked whether TD Canada Trust or Canada Post has a job creation program and sheltered workplaces for people with mental illness.

Mertl said TD Canada Trust does not have a job creation program but does have administrative and support positions that may fit this group's needs, although this is not the case in Ottawa where customer service jobs predominate.

Canada Post also has no job creation program but has modified duties for existing employees, said Middlemiss.

A participant said she was an instructor who was fired from Algonquin College due to stigma. Alison Armstrong expressed regret and said the college is making an effort to educate both students and faculty about mental illness.

Education, awareness, and training are crucial, Middlemiss said, and start with the leaders.

Mertl said it is very helpful to network with different employers, such as at today's conference.

Another participant suggested encouraging more advocates and corporate sponsors to support local non-profit organizations.

There is a people side and a business side to supporting employees and diversity, said Mertl. Immigration is expected to be the mainstay of future employees. Companies need to reflect the community they serve. The bottom line is that it is the right thing to do.

The Employee's Decision to Disclose Mental Illness in the Workplace

MODERATOR

Dr. Irit Sterner
Clinical Psychologist, Mood Disorders Program
Royal Ottawa Mental Health Centre

PANELISTS

Evelyn Sparks
Chief Occupational Therapist
Royal Ottawa Mental Health Centre

Pamela Chapman
Labour Arbitrator

Evelyn Sparks said it is easy for someone to tell others about a broken arm and it has become easier to talk about diseases such as diabetes or breast cancer, but in current culture, “there are many people who believe that if I am depressed, I should just get happier.” Blame is often put upon the person for their own mental illness, even though the evidence says otherwise. Sparks listed a number of reasons for reluctance to disclose a mental illness:

- Fear that privacy will be compromised
- A negative work environment in which people might take advantage of the disclosure and make the person’s life difficult
- Negative impact on career advancement
- The personal nature of the illness may seem unsuited to a workplace context

“We know that the stigma is very real, because the stats show that many Canadians have an attitude about mental illness that they do not have about other illnesses.” Sparks said she does see cases where disclosure of mental illness in the workplace can lead to a strong negative reaction from the employer, but she also sees encouraging signs in the legal response to such cases. She cited a case where a recently hired employee was fired shortly after disclosing her bipolar disorder to her employer. Although new hires generally have very limited rights, the OHRT made “a very clear statement that this was not the answer,” and awarded the employee \$80,000 in damages.

Drawing on several real-life examples, **Pamela Chapman** demonstrated that the reasons for disclosing a mental illness can vary. There may not be a strong reason to disclose one’s illness when one is able to do the job effectively without disclosure. There are situations where it might be advisable to disclose one’s illness when in a state of wellness and work is less busy, thereby mitigating future work absences. In some cases, immediate disclosure is necessary because the illness is impacting job performance. In this circumstance, disclosure can be an opportunity for an open conversation with one’s employer about the situation and possible measures to facilitate the continuation of work.

Chapman said there are many legal benefits to disclosure, and it is often a prerequisite for obtaining the protection that one is entitled to in the workplace. Chapman said there have been several positive developments in disclosure laws. Recent decisions have affirmed that employers are required to accommodate employees with disabilities to the point of “undue hardship.” This means that employers may have to tolerate some degree of workplace inconvenience where disability is a cause or even a contributing factor.

Chapman noted that failure to disclose in a timely fashion is not necessarily fatal to a case. Some arbitrators and courts recognize that stigma may be a concern and can hinder disclosure of an illness at the appropriate time. However, law advocates will generally encourage timely disclosure since failure to do so can sometimes cause the case to be vitiated.

Sparks said that as long as an illness does not present any safety risks there is no obligation to tell one’s story. Some people may argue that those with mental illness should “out” themselves to help reduce the stigma associated with mental illness. However, Sparks said, the decision to disclose is a personal choice and “each person has the responsibility to do what feels best for them.” One should only disclose “as much as you feel comfortable with or is necessary to get the accommodation that you need.” She listed several questions to ask oneself when deciding whether to disclose:

- How stressful would it be to pretend that I am well?
- Have there been other examples of successful accommodation in this workplace?
- How will the illness affect my work?

Chapman said cases are often unsuccessful when “the issue isn’t tackled early enough.” When mental illness is disclosed in a timely fashion, the employee has more control over the agenda, rather than allowing the employer’s agenda to drive the process.

Chapman noted that the law varies depending on the type of workplace, with the “big divide” occurring between unionized and non-unionized work environments.

When disclosing, it is generally adequate to state the general nature of the condition rather than identifying a specific diagnosis. The more absences from work owing to the illness, the more details may be required. It will generally be necessary to provide medical information to back up one’s claim, and, although this is never the first step, there may be an obligation to undergo an examination by a professional apart from a doctor. “It is important when contemplating disclosure to be alert to that,” said Chapman.

Sparks said workplace environment is an important consideration when contemplating disclosure. “The reality is that holding onto that job isn’t always the best plan for everyone.” Certain work situations are “toxic” and will eventually make a person ill again. Remaining in these situations comes at too high a price. She said many of the clients she sees are not in the

proper emotional state to take their case to a tribunal and risk “being crushed under the process of trying to defend their rights.”

Chapman said legal decision-makers have driven a number of encouraging developments in the workplace. The commercial sector has embraced a “huge new culture of privacy,” and there has been a “trickle down” from privacy for customers to privacy for employees. Large companies in particular are developing many good practices for dealing with privacy issues, such as limiting disclosure to a need-to-know basis. Holistic workplace accommodation programs are being developed that lead to good communication and dispute resolution.

Sparks noted that good dispute resolution is important because “the stress of the process can make people sick that haven’t started sick.” In addition, there has been a cultural shift toward encouraging a return to work that is not just early, but “early and safe.”

Discussion

A participant asked Sparks whether her employees are aware of the legal and practical benefits associated with disclosure. Sparks said it is a clinician’s responsibility to be informed and “it is important to have a good grasp of the system.” Although not a lawyer, the clinician has an obligation to educate the patient about the process. Sparks acknowledged that clinicians sometimes become “a little too narrow in our focus.”

A participant asked how to manage the transitional period between being fired and taking a case to the tribunal. Chapman said it is important in these situations to deal with the problem early. If one is already at the point of being fired, it will be difficult to get a good and quick result. Sparks added that a mental health practitioner can be very helpful when negotiating with an employer.

A participant asked Chapman for her thoughts on last-chance agreements. Although Chapman acknowledged that such agreements can be “essentially discriminatory,” she said they can still be valuable tools for motivating employees and helping to keep them in the workplace.

A participant asked how to handle gaps in one’s resume—essentially, disclosure prior to getting hired. Chapman said this is a difficult problem as, generally, “rights don’t start until the contract begins.”

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Afternoon Keynote Address

A New Way to Look at an Old Problem: Addressing Some of the Social Determinants of Mental Health in the Canadian Forces

SPEAKER

Lieutenant Colonel Stéphane Grenier
Operational Stress Injury Social Support (OSISS) program
Veterans Affairs Canada

Lt. Col. Stéphane Grenier said Canadians accept a program for people who are physically injured overseas, but do not know how to cope with those who come back “a different person.” Part of the problem is that mental health issues are given stigmatizing names, such as “battle fatigue” and “post-traumatic stress disorder” (PTSD).

The very nature of the military puts people at risk of physical and mental harm, Grenier said. Those at risk should be treated faster. “I’m not suggesting that bipolar disorder is not worthy of treatment. But if we do not aggressively address the issues that go with the job, we’re not pulling our weight.”

Operational stress injury (OSI), a subset of mental health issues, is caused by a lack of control. “It’s not fun to be a private. The culture is to suck it up.” Grenier said personnel should do just that on the long march back to camp, but that leaders should adjust their leadership style back on the base to be more supportive of mental health.

The OSISS program’s objective is not to change military culture. The goal is to shift attitudes to shorten the timeline and empower people to act sooner, said Grenier, rather than suffering undiagnosed as he did for seven years after losing two soldiers at his side.

The program has been demedicalized and aims to give people tangible skills that promote the instinct to do the right thing. It is based on the notion that no two people are the same and that skills may need to be altered. Grenier said the military culture is quick to blame problems on the leaders. “No longer—from a mental health perspective, it’s too easy to blame the boss. Leaders are accountable for their actions but followers can’t abdicate their own health.”

Grenier said OSI has four main causes: trauma, fatigue, grief, and moral injury. All underlying issues need to be examined, not only the most obvious: the lives that cannot be saved, the injustices, the double standards, the betrayed values, and even the grief the entire chain of command experiences when soldiers are lost. “We are changing our opinions of why people take drugs and drink—to understand it, not just discipline it.”

Employers cannot ask employees to leave their personal problems at home, he said. While it is not the employer's responsibility to manage these issues, it is his or her responsibility to acknowledge that people carry baggage.

Grenier has completed the program's exercises. "I'm still injured," he said, "but I can work and I can be productive. These are the points we're trying to enforce."

Power lies in education, and education must happen in the workplace, where the audience is captive and stigma occurs. While one may be supportive and understanding in a familial context, when managing a workplace, this empathy does not necessarily carry over. "That's why stigma has to be addressed in the workplace."

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Workshop 3

Returning to Work from Medical Leave

MODERATOR

Dr. Irit Sterner
Clinical Psychologist, Mood Disorders Program
The Royal Ottawa Mental Health Centre

PANELISTS

Alyson Brady
Associate
Jewitt McLuckie & Associates

Rosemarie Lidstone, O.T. Reg (ON)
Occupational Therapist, Mood and Anxiety Programs
Royal Ottawa Mental Health Centre

Dr. Ron Seatter
Psychologist

Alyson Brady said lawyers generally do not play a role in a return to work situation unless something goes wrong. Typically, lawyers become involved when an insurance carrier denies coverage or a union contacts them, at which point the lawyer acts as a go-between, representing the employee's interests. This can involve determining what information the insurance carrier needs and going to the health professional on the employee's behalf, always from the legal perspective of fulfilling the necessary obligations for the insurance carrier to approve the claim.

"We look at return to work as an attempt rather than a success," Brady said. "Although we hope for the best, legally we want to keep insurance options open." A lawyer looking at a medical report will examine how the return is phrased, knowing that the insurance carrier will

be examining that closely. The lawyer will also examine the accommodation plan to make sure it can be easily understood by the employer, the employee, and the insurance carrier.

Rosemarie Lidstone described her therapeutic work as identifying performance issues or barriers that affect a person's ability to function in meaningful areas of self-care, leisure, and productivity. Some examples of meaningful occupations are preparing a meal, driving, living independently, and working. Employees reporting mental health issues might have difficulties with such activities as managing medication, nutrition, housework, laundry, maintaining employment, and social activities.

Many occupational therapists use the Person-Environment-Occupation Model, represented by three overlapping circles, one for each element, with the overlap representing occupational performance. By identifying and managing each issue through assessment, understanding, teaching, counselling, and advocacy, the circles overlap more tightly and create a larger overlap area—enhancing the occupational performance area.

Personal issues that may need to be addressed include:

- Readiness to return to work
- Current symptoms and a personal sense of mastery over symptoms
- Fear of negative judgment
- Level of support in the workplace
- Coping strategies
- Level of satisfaction with work before leaving

Environmental issues that may need to be addressed include:

- Organizational culture and willingness to accommodate
- Organizational dynamics
- Prior relationship with co-workers
- Effect of leave on co-workers
- Physical environment (lighting, noise level, ergonomics)
- Financial situation (employee may need to work earlier than medically indicated, for financial reasons)

Occupational issues that many need to be addressed include:

- Working hours
- Workplace demand
- Mandate of organization
- Approach to tasks (for example, speed, perfectionism)

- Knowledge and skill set
- Occupational fit (past versus present).

Ron Seatter said his private psychology practice includes advising on an employee's readiness to return to work. His assessment must be thorough and there are significant penalties for failing to meet that standard.

Seatter said it is vital that his clients grasp that they should not be treated differently than anybody else. Generally, they find this a welcome change from being talked down to. "As health professionals, we need to do a better job of listening. It's a privilege to work with people's health." Clients often come to him as part of the process and not of their own volition. As a total stranger, they find it difficult to answer some of the tough and personal questions he has to ask, and he always thanks them for disclosing.

Discussion

A participant asked what kind of process might apply if the employee could not attain complete wellness.

Brady said it depended on the mandate. If the employee returned to his or her own occupation, the question is whether adequate modifications can be made. After two years, the question becomes whether that person can do any job, even part-time. Answering those questions is the first step, hence the importance of a good assessment. She said many people believe mental health leave is a vacation but it is far from that. Benefits are not equivalent to a salary—the individual has to do a lot more with a lot less. An employed person's resources counteract their daily stresses. This is not the case for those with a disability who are on medical leave because at least 25% of their resources are gone and they also have to deal with the disability that took them away from work, added stress, and insurance forms.

Lidstone said the number of hours a day the person can work may be an issue. People generally know what their personal limits are. She often recommends a progressive return after a leave due to a mental illness and most employers are supportive—they want to know what the employee needs so they can either give them specific duties or ask them to do what they can. As much as the employer has a duty to accommodate, it is also up to the employee to be reasonable in requests for accommodation. Lidstone cited an instance of an employer that agreed to 10 out of 11 requests of an accommodation plan. The employee wanted to leave at 14:30 to pick his son up from school but was refused because other employees did not have this option and it was not company policy. The employee was unhappy and cited this condition as a reason. This could be seen as an unreasonable request.

She gave another example of a difficult employee whose employer had agreed to most requests but wanted her to use sick leave for her appointments. Although she had a lot of sick leave hours allocated, she did not want to use them. Again, this may be seen as unreasonable.

A participant asked about the percentage of people who fall through the cracks in terms of obtaining legal or occupational therapy support. She said when she became ill she quit her job, found another, and was fired. She went into hospital twice. She is still not well but has made her way back and thinks it would have been wonderful to have people such as the panelists by her side during that time. She asked if she could sue the employer who fired her and what she could ask for, and whether there were many like her who had "DIY-ed" themselves back to health.

Brady she said she did not know the answer because "it takes something to get you to walk through the door and that can be difficult."

Lidstone said there were probably too many people who did not receive these services. She said a health care professional could have helped monitor the participant's symptoms and possibly recommend disability leave, protecting her employment.

A participant questioned the benefit of taking vacation time during a gradual return. She did not understand why an employee who was trying to build stamina to return to a full-time position would defeat the process by taking days off.

Seatter said a gradual return is not a vacation. A return to work is usually carefully scripted and should be closely followed. However, he said, there are no absolutes, and agreed that long breaks did appear to defeat the purpose.

A participant asked to what extent occupational therapists work with employers instead of with employees.

Lidstone said she will advocate on an employee's behalf if necessary, and it has been asked of her. She said she prefers to strengthen the employee to assert his or her own needs with the employer. In her hospital setting, she tends to get employees to a certain point and then someone else takes over.

A participant asked whether employers have the same access to resources for mental health disabilities as they do for physical disabilities. Another participant who is an occupational therapist that works with an employer said she educates the employer on how to minimize absenteeism and be successful when it comes to understanding disability claims and time off work.

A participant asked about available resources for accommodation for organizations with limited resources, such as the non-profit sector.

Brady said that performing an internet search using the term "return to work following mental illness" revealed many hits.

Seatter suggested contacting Reach Canada.

Another participant suggested visiting www.mentalhealthworks.ca.

A participant said the focus seems to be on people benefiting from long-term disability, which is a small percentage of the population. Many more people fall under the Ontario Works program or the Ontario Direct Funding Program, and these do not sufficiently cover medication. Many people do not have access to experts such as the panelists.

Another participant said employees could use Reach Canada to access 200 lawyers in the community who contribute three hours of legal advice to people with mental health issues. The organization can help individuals find the right lawyer and decide how much time the lawyer will donate over and above the three hours. Reach Canada also finds speakers, who are often lawyers, to lecture on the duty to accommodate and other subjects. The organization works with the Ottawa Hospital on a DiversABILITIES training program that helps employers achieve success as inclusive and accessible workplaces, and with departments such as Health Canada, doing lunch-and-learn talks about working with people with disabilities.

A participant said she had just returned to work after 20 years. While the situation has not arisen, she asked if she could be fired if she had been accommodated and then became ill again.

Brady said that the dismissal would be a violation of Canada's human rights laws if it was related to her disability.

The participant asked how much accommodation is required by the employer with regard to performance.

Brady said this depends on the workplace size. The owner of a corner store is limited in his or her ability to find alternate tasks for an employee. However, a large employer is under much more pressure to accommodate because of the many different jobs under its umbrella and the possibility of offering part-time work. The question becomes, "What do you need that's beyond what the employer can offer?"

Another participant said that, apart from her mental and physical disabilities, her biggest barrier was performance anxiety.

Seatter said a big part of his job was to normalize performance fears through a gradual return to work.

Lidstone said it would be a rare person who has a mental health issue but not a performance issue. "We have to understand how we expect ourselves to perform in the workplace. If it's at 90% all the time, it's unrealistic."

Somebody asked what employer would grant her two months of disability leave every three years for her to spend in hospital adjusting her medication.

Lidstone said a friend of hers who worked for an extremely large local employer informed her that although it is not permissible for the employer to pass people over because of mental health issues, it always found another reason to not hire them. If an employee needs accommodation, Lidstone said, the best time to divulge this need is after the probation period.

A participant said the increasing prevalence of contract positions makes it difficult to plan ahead and makes her unsure of the future.

Another participant said her first job after graduating with her PhD was a contract. It was a foot in the door and meant she was not to be excluded. "If somebody sees that I'm a good employee, get on with my peers, they may find a way to keep me." She also said that any job, even a volunteer position, builds a person's credibility and resumé, whether they have a disability or not.

Lidstone said Ottawa's nature as a government town means that its residents are more accustomed to long-term positions and job stability than others. "We have to question those people who do want to stay in the same job for 30 years. We have to be more flexible in how we see things."

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Conference Wrap Up

CONFERENCE CHAIR

Raquel Chisholm
Associate
Emond Harnden, LLP

Raquel Chisholm thanked the participants for attending. She said the sessions had been animated, enthusiastic, and had elicited many questions and ideas. She said the conference's goal of moving beyond legal discussions toward practical ideas and solutions had been met.

Acknowledgements

Reach Canada would like to thank the Law Foundation of Ontario for its significant support of this conference. As well, thanks are extended to Emond Harnden LLP, along with The Conference Publishers.

Conference Committee Members

Raquel Chisholm, Chair

Paula Agulnik

Harry Beatty

Carol Ann Crockett

Lisa Jamieson

Frank McNally

Erin O'Hara

Renée Ouimet

Dr. Ron Seatter

Dr. Irit Sterner

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