

Creating a cultural analysis tool for the implementation of Ontario's civil mental health laws



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ABSTRACT

Ethno-racial people with mental health disabilities experience multiple inequities and differential outcomes when interacting with Ontario's civil mental health laws. Given the increasing multi-racial population in Ontario, there is a need to develop mechanisms to address these intersecting issues. Other countries that have created evaluative tools for mental health legislation include the United Kingdom and Australia. Australia's Rights Analysis Tool, the United Kingdom's Race Equality Impact Assessment, the Scottish Recovery Tool, and the World Health Organization's Mental Health and Human Rights checklist are examples of evaluative tools developed for mental health legislation. Such a tool does not exist in Canada, let alone in Ontario specifically. Thus, this study developed a Cultural Analysis Tool (CAT) consisting of specific and meaningful thematic questions that can be used by practitioners when addressing issues of culture and equity for ethno-racial people with mental health disabilities interacting with Ontario's civil mental health laws. It is hoped that the CAT, and the research underlying its development, will enable practitioners to critically question whether cultural and intersecting concerns are being appropriately addressed within an ethno-racial client's case and, furthermore, how equitable outcomes can be achieved. This article describes and analyzes the methodology, research and qualitative data used to develop the CAT. It then presents and examines the CAT itself. The qualitative data was drawn from thirty-five semi-structured interviews with seven members of each of the following groups: (1) ethno-racial people with mental health disabilities including in-patients and ex-patients, (2) lawyers who practice in the area of mental health law, (3) health care professionals including psychiatrists, nurses and social workers, (4) service providers such as front-line case workers at mental health agencies and (5) adjudicators, government advisors and academics. After an analysis of these data, the CAT's questions were refined through an expert review (involving the qualitative technique of member-checking) using three focus groups comprised of ethno-racial people with mental health disabilities, mental health lawyers and service providers and health care professionals.

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1. Introduction

Ethno-racial people with mental health disabilities¹ interacting with Ontario's civil mental health system experience multiple inequities

such as barriers to accessing culturally appropriate treatment,² a higher involuntary admission rate,³ a higher likelihood of being diagnosed

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¹ Ethno-racial people refer to people who come from an "immigrant, refugee, ethno-cultural or racialized group" and have diverse service needs. Mental Health Commission of Canada & CAMH, *Improving Mental Health Services for Immigrant, Refugee, Ethno-Cultural and Racialized Groups: Issues and Options for Service Improvement*, (Toronto: Mental Health Commission of Canada, 2009) at 7. I will use the term "people with mental health disabilities" to describe those who are recipients or former recipients of mental health and/or addiction services. This term is accepted amongst mental health researchers. Since there is no consensus on what the appropriate terminology should be to describe people with mental illness, other terms that have been used include: psychiatric consumer/survivors, psychiatric disability and mental health disability. Peter Barham & Marian Barnes, *The Citizen Mental Patient in Law Without Enforcement: Integrating Mental Health and Justice* 133, 138 (Jill Peay and Nigel Eastman, eds., 1999).

² Mental Health Commission of Canada & CAMH, *id.* at 4; Rob Whitley, Laurence J. Kirmayer & Danielle Groleau, *Understanding Immigrants' Reluctance to Use Mental Health Services: A Qualitative Study from Montreal*, 51 Can. J. Psychiatry 205, 206 (2006).

³ There are no specific statistics available in Canada and Ontario specifically on the number of ethno-racial patients being involuntarily admitted to psychiatric facilities. In the United Kingdom, the Count Me in Census is a valuable resource. Care Quality Commission, *Count Me in 2010* (London: NHS, 2011). Other studies drawing on statistics from the United Kingdom include: D.J. Vinkers, S.C. de Vries, A.W. van Baars & C.L. Mulder, *Ethnicity and Dangerousness Criteria for Court Ordered Admission to a Psychiatric Hospital*, 45 (2) Soc. Psychiatry Epidemiology 221, 221 (2010); Kwame McKenzie & Kamaldeep Bhui, *Institutional Racism in Mental Health Care*, 334 British Medical Journal 649, 649 (2007). Globally, the WHO reports that minorities have a higher likelihood of being involuntarily detained. World Health Organization (WHO), *WHO Resource Book on Mental Health, Human Rights and Legislation* 85 (2005).

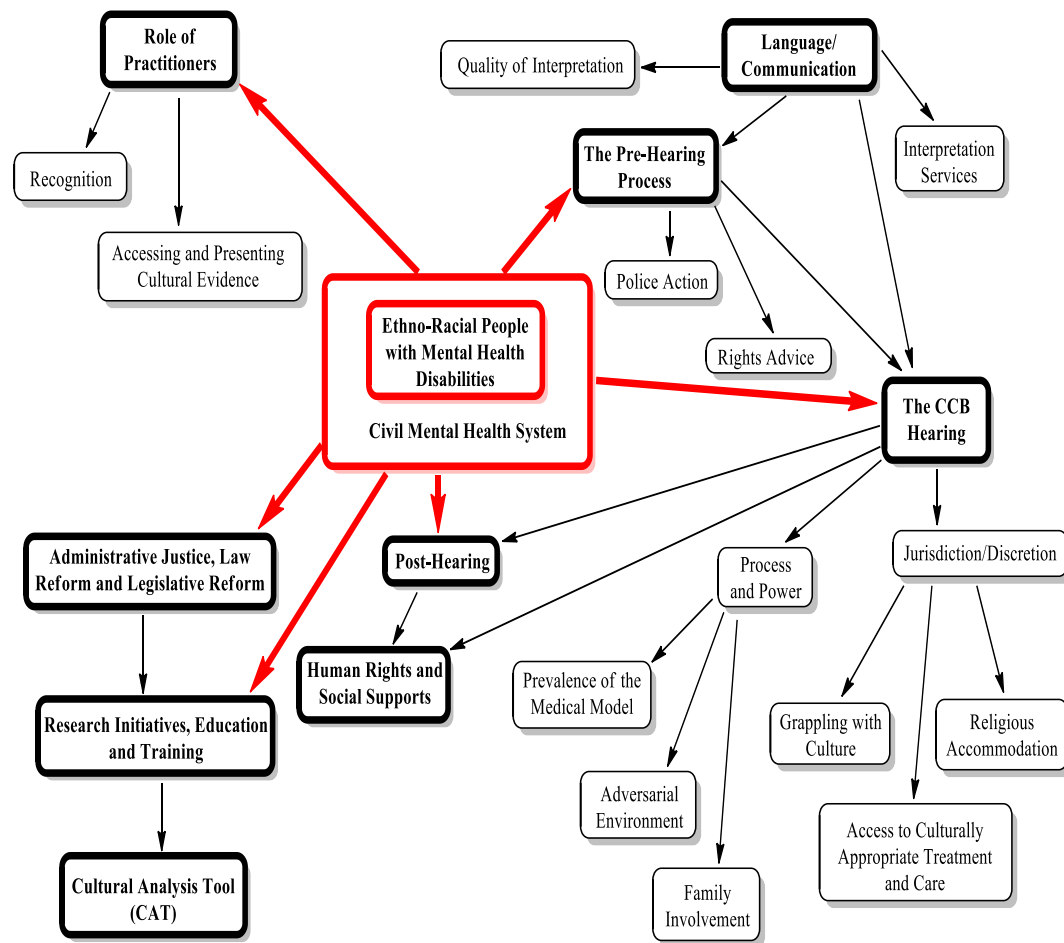


Fig. 1. Conceptual framework: emergent themes derived from an analysis of the results.

with psychosis,⁴ and increased use of seclusion, restraint⁵ and emergency psychiatric medication.⁶ They are exceedingly vulnerable during contact with the Ontario's Consent and Capacity Board's (CCB's) pre-hearing, hearing and post-hearing processes. Given the dearth of research on this particular topic,⁷ there is a critical need to develop legal tools and approaches that address these disparities of outcome and intersecting issues. Thus, this study created a Cultural Analysis Tool (CAT) consisting of specific and meaningful thematic questions that can be used by practitioners when addressing issues of culture

and equity for ethno-racial people with mental health disabilities interacting with Ontario's civil mental health laws. It is hoped that the CAT, and the research underlying its development, will enable practitioners to critically question whether cultural and intersecting concerns are being appropriately addressed within an ethno-racial client's case and, furthermore, how equitable outcomes can be achieved. (See Fig. 1.)

Ontario's civil mental health laws are distinct from forensic mental health laws. Forensic mental health laws apply to people declared not criminally responsible or unfit to stand trial by reason of mental disorder under the *Criminal Code of Canada*.⁸ In contrast, Ontario's civil mental health laws concern voluntary⁹ and involuntary psychiatric admission procedures and criteria,¹⁰ consent and capacity issues in relation to treatment,¹¹ admission to long-term care facilities,¹² substitute-decision making,¹³ community treatment orders,¹⁴ management of property¹⁵ and personal care¹⁶ and privacy and confidentiality of medical information.¹⁷ The Consent and Capacity Board of Ontario (CCB) is

⁴ G. Eric Jarvis, Irene Toniolo, Andrew G. Ryder, Francesco Sessa & Carla Cremonese, *High Rates of Psychosis for Black Inpatients in Padua and Montreal: Different Contexts, Similar Findings*, 46 (3) *Social Psychiatry and Psychiatry Epidemiology* 247, 251 (2010). The study found that black patients from the emergency department in a community hospital in Montreal, Quebec were three to four times more likely than "white patients" to be given the diagnosis of psychosis. Also, see Suman Fernando, *Inequalities and the Politics of 'Race' in Mental Health*, in *Mental Health in a Multi-Ethnic Society: A Multidisciplinary Handbook* 42, 47 (Suman Fernando & Frank Keating, eds., 2009). Drawing on research from the United Kingdom, Suman Fernando suggests that black/ethnic minorities are more often diagnosed as schizophrenic.

⁵ Susan Stefan, *Leaving Civil Rights to the 'Experts': From Deference to Abdication Under the Professional Judgment Standard*, 102 *Yale L.J.* 639, 660 (1992).

⁶ G. Eric Jarvis, *Emergency Psychiatric Treatment of Immigrants with Psychosis* (Master of Science Thesis, McGill University Institute of Community and Family Psychiatry, 2000) [unpublished]. This quantitative study was conducted in Montreal and it suggested that the administration of anti-psychotic medication may be motivated by patient ethnicity; Susan Stefan, *id.* at 660; Suman Fernando, *supra* note 4, at 47.

⁷ Aaron Dhir, *Relationships of Force: Reflections on Law, Psychiatry and Human Rights*, 25 *Windsor Review of Legal and Social Issues* 103, 108 (2008). Dhir suggests, "as compared with other fields, there is a dearth of progressive Canadian legal literature addressing the most pressing challenges facing those with psychiatric disabilities — let alone doing so from a critical, interdisciplinary perspective" (108).

⁸ R.S.C. 1985, c. C-46, s. 2 ("unfit to stand trial"), s. 16 ("not criminally responsible"), Part. XX.1 (Mental Disorder) ss. 672–672.95.

⁹ See for example, *Daugherty v. Stall*, [2002] OTC 944, 48 ETR (2d) 8 (Ont. S.C.J.) referred to A, T0020721, 22 June 25, 2002.

¹⁰ See for example, *Mental Health Act*, RSO 1990, c. M 7, s. 20 [MHA].

¹¹ *Health Care and Consent Act*, S.O. 1996, c.2, ss.10–25 [HCCA].

¹² HCCA, *id.* at ss. 38–49.

¹³ *Substitute Decisions Act*, S.O. 1992, c. 30 [SDA].

¹⁴ MHA, R.S.O. 1990, c. M.7, s. 20 at ss. 33.1–34.1.

¹⁵ SDA, S.O. 1992, c. 30 at ss. 4–42 [SDA].

¹⁶ SDA, *id.* at ss. 43–68 [SDA].

¹⁷ See generally *Personal Health Information Act*, S.O. 2004, c.3, Sched. A [PHIPA].

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