Enabling Justice:
Mental Health & Human Rights at Work

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Over the last quarter century, mental health in the workplace has emerged as a pressing global issue that defies unidisciplinary analysis and problem-solving. It transcends individual suffering, to touch families and co-workers, managers and institutions. Employees with disabling mental illness suffer under-treatment, misunderstanding and stigma, even as mental health employment disability climbs towards the majority of new claims in nations ($25+ billion annually in Canada). Facets of the societal challenge have been documented by reports from the US Surgeon General, UN agencies and the OECD.

What role(s) should the law play? Of five leading ones, we identify a paramount role: articulating human rights, duties and standards towards transformative justice in the workplace.
- Can workplaces require applicants or employees to disclose their mental health status?
- What does the duty not to discriminate affirmatively oblige employers to do?
- Should institutions develop mental health literacy training for managers?

To answer such questions, we urge an enabling human rights framework that weds health privacy and equality principles to compelling workplace needs. If safety or public protection sometimes necessitates disclosures, for instance, strict standards should specify the scope, use and management of mental health information. To illustrate how a framework arbitrates the clash of values, we draw on international /national laws and good practices, to present case studies: (i) on pre-employment mental health questions for professionals; and (ii) on accommodation standards, duties and limits.

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[1] *Colleen Sheppard, Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada. McGill-Queen's University Press 2010.*