Report to / Rapport au:

OTTAWA POLICE SERVICES BOARD LA COMMISSION DE SERVICES POLICIERS D'OTTAWA

26 September 2016 / 26 septembre 2016

Submitted by / Soumis par:
Chief of Police, Ottawa Police Service / Chef de police, Service de police d'Ottawa

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SUBJECT: RESPONSE TO OUTSTANDING INQUIRY #I-16-03: OTTAWA POLICE

SERVICE ACCOMMODATION

OBJET: RÉPONSE À LA DEMANDE DE RENSEIGNEMENTS NO I-16-03:

MESURES D'ADAPTATION - SERVICE DE POLICE D'OTTAWA

REPORT RECOMMENDATIONS

That the Ottawa Police Services Board receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que la Commission de services policiers d'Ottawa prenne connaissance du présent rapport à titre d'information.

BACKGROUND

At the Ottawa Police Services Board meeting on May 30, 2016, Board Member Tierney submitted the following inquiry:

- As there are 160 out of 1400 uniformed officers on accommodation, and where these same officers on accommodation are allowed to work paid duty; is this consistent with other municipal police services?
- 2) Do you consider this a high number of officers on accommodation for a municipal police service?

This report responds to the inquiry. It also provides background information on the circumstances which give rise to accommodations, an employer's legal obligations in

the matter of accommodations and the unique challenges which a Police Service faces in managing accommodation requirements.

DISCUSSION

Contributing Factors Leading to Accommodations at OPS

Employees in the police sector face a variety of different risks that could cause a range of injuries and illnesses ultimately resulting in the generation of requests for **medical accommodations.** Examples include:

- Risk of physical injury associated with physical violence and motor vehicle collisions;
- Fatigue management risks related to physiological challenges inherent to shift work;
- Exposure to psychological stressors (e.g. witness of human suffering);
- Exposure to biological, chemical, and physical agents that can cause a multitude of occupational illnesses; and
- Pressures associated with of high degree of public scrutiny present in the modern policing environment.

Medical accommodations are defined in Table 1, as is the process followed by the employee and employer in working through this kind of accommodation.

Family status accommodations are less common in the workplace, but are gaining in prevalence as more women sworn officers are hired and as the incidence of sworn couples rises. Table 1 includes a definition and the process followed for this type of accommodation.

There are also informal accommodations that are successfully handled at the operational unit level – usually for less complex medical or family needs. This definition and process is also noted in the Table.

Regardless of the type of accommodation – either medical or family status - it is important to remember that accommodated members report for duty each shift, undertake the work assigned to them and are valuable contributors to the OPS.

Table 1

Types of Accommodations at OPS

Accommodation Type	Description
Formal Medical Accommodation	An employee has provided medical documentation to the Health, Safety & Lifestyles (HSL) unit to demonstrate a medical disability that requires special measures for accommodation. HSL has collaborated with OPS's Operational sections to find a solution that allows the affected member to work in a meaningful, productive, value-added capacity.
Formal Family Status Accommodation	An employee has provided documentation to the Labour Relations unit to demonstrate a family status consideration that requires special measures for accommodation. Labour Relations has collaborated with OPS's Operational sections to find a solution that allows the affected member to work in a meaningful, productive, value-added capacity.
Informal/Operational Accommodation	An employee has identified a need to be accommodated for medical or family status reasons, but the member's own Operational unit has successfully accommodated the member without requiring involvement from specialized resources from the HSL and/or Labour Relations sections.

For the purpose of further discussion in the remainder of this document, the term "accommodated" will refer to an OPS member who has sought a Formal Medical Accommodation.

The Duty to Accommodate

The Duty to Accommodate is a legal obligation conferred upon the employer under the the *Ontario Human Rights Code*. Section 2(1) of The *Code* states:

"Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance."

Employers are required to accommodate employees up to the point of demonstrable undue hardship.

The *Code* prescribes three considerations in assessing whether or not an accommodation would represent undue hardship:

- 1) Cost;
- 2) Outside sources of funding, if any; and
- 3) Health and safety

For a proposed accommodation measure to be considered to present a legitimate instance of undue hardship, that measure must be demonstrably infeasible with respect to at least one of those three criteria.

The Ontario Human Rights Commission provides interpretive guidance about various factors that are not considered to represent undue hardship. These factors include:

- Business inconvenience:
- Employee morale;
- Third-party preference; and
- Collective agreements or contracts

Discriminatory acts cannot be legally justified solely based on a rationale involving any of these or similar factors.

The threshold required for large employers such as the OPS to successfully demonstrate undue hardship is significant. This is due to a combination of factors, including:

Our considerable operational budget;

- The extremely varied quantities and qualities of meaningful work that can be identified to help contribute to our diverse operational goals; and
- The extent to which employers are expected to demonstrate flexibility when trying to find creative, non-discriminatory workplace solutions to workers who have disabilities.

Although the threshold to demonstrate undue hardship is onerous, the OPS has met that threshold in the past. The instance involved a Communications Centre employee. The OPS was able to successfully demonstrate that an employee's disability presented such significant cost-related challenges that employee was deemed incapable of performing meaningful work in the Communications Centre environment without imposing undue hardship on the employer.

Data on Formal Medical Accommodations at OPS

The following tables provide a high-level overview of the number of formal medical accommodation cases that existed at the OPS on July 31, 2016. In total 123 sworn members (9.2%) were accommodated on that date, not including the 29 civilians (4.8%) that were also accommodated.

The data shows that rates of accommodation are higher amongst sworn members than civilians; that permanent accommodation rates are lower than temporary ones amongst sworn; while civilian permanent and temporary rates are lower and almost equal. In total 9.2% of sworn members required accommodation compared to 4.8% of civilians. Of sworn members, 3.4% required a permanent accommodation while 5.7% required a temporary one. In the civilian group 2.5% required a permanent accommodation versus 2.3% for a temporary one.

Table 2
Temporary and Permanent Accommodations
Sworn and Civilian Members
July 31, 2016

Category	Duration	Number of Cases	% of Employees
Sworn	Temporary	77	77/1340 = 5.7%
(1340 Members)	Permanent	46	46/1340 = 3.4%
	Sworn Subtotal	123	123/1340 = 9.2%

Civilian (608 Members)	Temporary	14	14/608 = 2.3%
	Permanent	15	15/608 = 2.5 %
Civilian Subtotal		29	29/608 = 4.8%
Overall Total		152	152/1948 = 7.8%

Table 3
Summary of Sworn Formal Medical Accommodations by Substantive Directorate
July 31, 2016

Directorate	Number of Cases	Total % of Employees Accommodated	% of Employees Accommodated Outside of Substantive Position
Patrol	43	43/509 = 8.4%	39/509 = 7.7%
District	49	49/303 = 16.2%	9/309 = 2.9%
Support Services	3	3/28 = 10.7%	1/38 = 3.6%
Criminal Investigations	11	11/237 = 4.6%	2/237 = 0.8%
Emergency Operations	8	8/132 = 6.1%	2/132 = 1.5%
Resourcing & Development	6	6/90 = 6.7%	1/90 = 1.1%
Corporate Support, Office of the Chief, and Executive Services Directorates*	3	3/41 = 7.3%	1/41 = 2.4%
Total	123	123/1340 = 9.2%	55/1340 = 4.1%

The Spectrum of Accommodation Complexity at the OPS

The data in Table 3 provides some insight into the distribution of the accommodation cases by directorate and the ability of each directorate to enable the member to remain in their substantive position.

Some formal medical accommodations are very simple in nature, and can pose minimal or negligible operational impact. Examples of common simple Formal Medical Accommodations include:

- Providing a member with the opportunity to take a 5-minute break every 2 hours perform stretching exercises to prevent or manage back pain
- Providing a member with flexible work environment that allows for alternation between sitting and standing during prolonged periods spent writing police reports to help with pain management
- Reducing overhead light levels to prevent migraine headaches caused by photosensitivity
- Providing a member with custom-made equipment (e.g. a special firearm holster with extra padding) when standard-issue equipment would cause significant pain or discomfort; and
- Allowing a member to drive a SUV patrol vehicle if that member experiences disabling knee pain caused by entering or exiting a traditional police cruiser

Simpler accommodations usually require comparatively lower amounts of resources from the OPS to meet accommodation needs.

Other formal medical accommodations can be more complex, and can pose more significant operational impact. Examples of common, more complex Formal Medical Accommodations include:

- Allowing a member with a broken hand and restricted use of force options to work on a special project away from the public where access to full use of force options is not imperative
- Restricting the hours or shifts during which a member works due to complications arising from side effects of various types of medications required to treat a variety of illnesses:
- Members who become pregnant are also temporarily accommodated during their pregnancy;

- Combining or bundling of a variety of job tasks in an unconventional way to help a section accomplish operational goals in a manner that incorporates job description flexibility;
- Allowing a member occasionally bring a service animal to the workplace for therapeutic reasons; and
- Allowing a member with a psychological injury or illness to transfer to another section to help avoid exposure to certain types of factors that could trigger or exacerbate adverse health effects.

More complex accommodations often require comparatively higher amounts of resources from the OPS to meet accommodation needs. Each accommodation case is considered against the threshold of undue hardship.

Top Two Most Impactful Formal Medical Accommodations at OPS

The two types of FMA cases that cause the most operational impact at OPS are:

- Limitations on use of force options; and
- Limitations on hours of work (i.e. shift restrictions)

Use of force limitations often result in requirements for frontline staff to be temporarily reallocated to positions outside their substantive directorates. In some cases, the reallocation process can require considerable administrative resources as efforts are made to find meaningful, productive police work that can be performed without use of force options. Reallocation of members with use of force limitations can also introduce operational challenges when sections are required to compensate for workload that can no longer be performed by reallocated accommodated members. For example, if a member on Patrol gets reassigned to another section for accommodation purposes, this has an impact on the Patrol section as efforts are made to readjust workload while members are accommodated.

Hours of work restrictions most commonly involve members who have medical conditions that prevent working during night shifts. Reassignment of a member to a new position in which they are not required to work night shifts can result in administrative and operational challenges.

Contributing Factors Leading to Formal Medical Accommodation Needs

Employees in the police industry face a variety of different risks that could cause a variety of injuries and illnesses ultimately resulting in generation of requests for accommodations. Examples include:

- Risk of physical injury associated with physical violence;
- Fatigue management risks related to physiological challenges inherent to shift work;
- Exposure to psychological stressors (e.g. witness of human suffering);
- Exposure to biological, chemical, and physical agents that can cause a multitude of occupational illnesses; and
- Pressures associated with of high degree of public scrutiny present in the modern policing environment.

Medical causes associated with accommodation requirements are similar regardless of whether or not accommodations are temporary or permanent in nature. The confidential nature of certain types of medical information limits the extent to which specific medical causal factors can be analyzed.

How OPS Manages Accommodations

The OPS uses a standardized approach to managing formal medical accommodations. A summary of conventional steps involved in facilitation of a formal medical accommodation is as follows:

- Step 1: A member produces medical documentation to request special workplace accommodations.
- Step 2: The Health, Safety & Lifestyles section reviews the medical documentation, challenges the validity of the documentation to an appropriate extent, seeks additional supplement documentation if necessary (often using a Functional Abilities Form – copy attached), and compiles a summary of the member's specific functional ability limitations.
- Step 3: HSL advises the member's substantive chain of command of the requirement for medical accommodation, and attempts to facilitate accommodation of the member within the member's own substantive position if possible.
- Step 4: If suitable accommodation cannot be found within the member's own substantive position, HSL works with the member's chain of command to attempt to find a suitable accommodation within the member's substantive Directorate.
- Step 5: If suitable accommodation cannot be found within the member's substantive Directorate, then HSL works with the member's chain of command,

substantive Directorate, and other non-substantive Directorates within OPS to attempt to find a suitable accommodation.

Please see the Supporting Documentation section of this document for a process map depicting the formal medical accommodation process.

The Police Personnel Collective Agreement between the Ottawa Police Services Board and the Ottawa Police Association contains a letter of understanding that pertains to a document called a Functional Abilities Form (FAF). The FAF is a useful tool that enables the OPS to gain a fulsome understanding of specific functional ability limitations that may substantiate a member's request for a Formal Medical Accommodation. An image of the letter of understanding is shown below.

LETTER OF UNDERSTANDING

BETWEEN

THE OTTAWA POLICE SERVICES BOARD

<u>AND</u>

THE OTTAWA POLICE ASSOCIATION

"Police Personnel"

The parties agree that where additional information may be required to support an employee's request for temporary or permanent medical accommodation or workplace modification:

- the employer shall provide the <u>Ottawa Police Service Functional Abilities Form</u>, attached hereto as Schedule "A", to the employee;
- the employee is responsible for ensuring that the form is completed by the attending physician and returned to Health, Safety & Lifestyles in a timely manner.

It is understood that individual prognosis and associated limitations/capabilities, concerning employee medical status, support early and safe return to work.

This Letter of Understanding shall, by way of amendment to the current <u>Letter of Agreement</u>, <u>Sick Leave/IPP</u>, form part of the <u>Collective Agreement between Ottawa Police Services Board</u> and Ottawa Police Association, Police Personnel.

DATED at Ottawa this 22 day of March, 2010

Ottawa Police Services Board

Chair

Ottawa Police Association

President

Please see the Supporting Documentation section of this document for a copy of the aforementioned Functional Abilities Form.

The Specific Application of Accommodations and Paid Duty Assignments

The OPS Policy 3.16 Paid Duty Assignments explains how Formal Medical Accommodation considerations are integrated into management of paid duty assignment. Section 7 of the policy's general requirements states:

"Members on accommodated duties shall be considered for paid duty assignments subject to the following:

a. Members who are being accommodated due to medical or other restrictions must ensure that any paid duty for which they apply for or perform is not in violation of their particular restrictions or limitations, and that they are able to complete the paid duty in compliance with safe workplace practices;

Note: Any member who applies for, or attends a paid duty assignment which is <u>not</u> in compliance with his/her workplace accommodation may be in violation of this policy.

- b. When assigning paid duties, hours of work or modifications to duties will be respected in order to ensure that the paid duties do not pose any risk of reinjury or exacerbation of the employee's condition. As well, paid duties must not increase health and safety risk to co-workers or members of the public;
- c. In the event that the Service schedules a member for a paid duty assignment that fails to ensure adherence to his/her restrictions, or the member's restrictions have changed and he/she is no longer able to perform the duties in a safe manner, the member will immediately notify the Paid Duty Coordinator and the paid duty will be reassigned. Provisions of paragraph 5 in the Procedures section below will apply;
- d. Health, Safety & Lifestyles will notify the Paid Duty Coordinator of members requiring workplace accommodation. The Paid Duty Coordinator will ensure any necessary consultation with Health, Safety & Lifestyles when assigning an accommodated member to a paid duty; and
- e. It is the responsibility of the member to ensure that Health, Safety & Lifestyles is advised of any change regarding their workplace accommodation."

To supplement the basic expectations outlined by the Paid Duty Assignments policy, the OPS ensures that checks and balances are in place to help identify situations in which members might sign up for paid duties assignments that would contravene known formal medical accommodation considerations. In the past, these measures have

resulted in administration of discipline to members who have been identified as signing up for inappropriate paid duties assignments.

Specific Responses to Member Tierney's Questions:

Question 1

1) As there are 160 out of 1400 uniformed officers on accommodation, and where these same officers on accommodation are allowed to work paid duty; is this consistent with other municipal police services?

Answer 1

There are currently 123 members accommodated and this number can fluctuate during the year. The OPS' approach to accommodating members is compliant with prescribed legal requirements (such as those outlined in the *Ontario Human Rights Code*). The *Code* stipulates that it is unacceptable to discriminate against individuals who have disabilities. Therefore, accommodated OPS members are generally provided with opportunities to work paid duty assignments. Exceptions would apply if there were a particular component of a paid duty assignment that could not be safely completed due to an accommodated member's specific medical needs.

For example - some OPS members have disabilities that limit hours of work for medical reasons. Consider an OPS member who is only medically cleared to work between the hours of 8:00 am and 8:00 pm. That member would be allowed to work a paid duty shift lasting from 10:00 am until 6:00 pm. That same member would be ineligible to work a paid duty shift lasting from 6:00 am until 2:00 pm. A member is ineligible to work paid duty assignments if the nature of those assignments include conditions that would violate the terms and conditions of a member's established formal medical accommodation measures. To limit a disabled member's eligibility to work paid duty shifts for any other reason would be interpreted by the Ontario Human Rights Commission as a form of discrimination.

The extent to which the OPS' approach is consistent with the practices used by other municipal police services has not been formally explored. However, the OPS is confident that our approach is compliant with the requirements of the *Ontario Human Rights Code*. The OPS should continue to comply with the *Code* regardless of the extent to which other employers opt to do so.

Question 2

2) Do you consider this a high number of officers on accommodation for a municipal police service?

Answer 2

Quantitatively speaking, the extent to which the OPS' accommodation numbers are consistent with other police services is difficult to ascertain. Industry-wide data of this nature are not readily available, consistently derived, or consistently monitored. As a result, there is a regrettable lack of reliable, meaningful data against which the OPS can compare itself. The OPS maintains open communication with other police services to attempt to obtain useful data from other employers in our industry. If we obtain useful data in the future, then we will compare our performance to other employers at that time.

To help assess whether or not the number of accommodated members at the OPS is high, it is necessary to consider the concept of "undue hardship" as described by the *Ontario Human Rights Code*. Undue hardship cannot be easily measured quantitatively. For example, there is no prescribed maximum number of accommodated individuals or percentage of a workforce that employers are expected to employ. Rather, the maximum number of accommodated members the OPS would be expected to employ to fulfil our duty to accommodate would correspond with the point of undue hardship. To justifiably refuse a member's substantiated accommodation request, the OPS would have to be able to defensibly demonstrate that necessary special accommodation measures would be unfeasible for reasons such as cost and/or health and safety considerations. Undue hardship is a very challenging threshold to meet for large employers such as the OPS.

By ensuring that 100% of the OPS' accommodated members are performing meaningful, valuable, productive work, the OPS strongly demonstrates that we do not discriminate against individuals who have medical disabilities. Given the circumstances, the number of accommodated members is not deemed to be high enough to warrant concerns of undue hardship for the OPS.

CONSULTATION

Historical consultation regarding this matter has primarily involved internal dialogue amongst various OPS directorates as facilitated by the Resourcing & Development Directorate. External consultation has occurred to the extent to which the OPS has been able to conclude the regrettable absence of meaningful data from other police services against which the OPS could perform any meaningful quantitative statistical analysis of employee accommodation rates.

FINANCIAL IMPLICATIONS

It is difficult to estimate financial implications associated with formal medical accommodations. All accommodated OPS members are completing meaningful, valuable, productive work. Details pertaining to individual accommodation cases vary considerably. It is generally not feasible to estimate the monetary value associated with employment of an accommodated employee versus employment of an employee who does not require any special accommodation measures.

It is reasonable to suspect that failure to accommodate a member in accordance with the requirements of the *Ontario Human Rights Code* could result in very costly financial implications. *Code* violations (e.g. failure to accommodate members with medical disabilities) would expose the OPS to risk of legal actions such as discrimination claims. OPS's exemplary record of accommodating members to-date has been an effective method of mitigating such financial risks.

SUPPORTING DOCUMENTATION

Document 1 - Formal Medical Accommodation Process Map

Document 2 - Functional Abilities Form

CONCLUSION

The OPS is managing employee accommodations within the relevant legal, labour and policy framework. The latest data shows that roughly 9% of sworn members and 5% of civilian members require accommodations. At this level the OPS is still able to manage the level of accommodated members in its workforce and has not reached a level of "undue hardship".

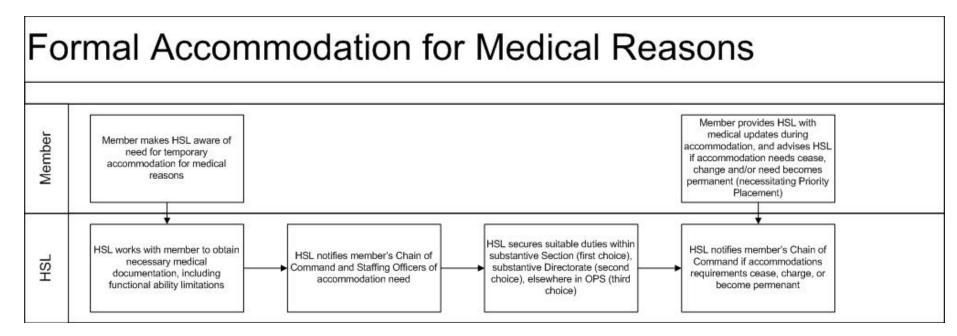
Current practices allow accommodated members to work paid duty shifts, provided the circumstances align with their restrictions. Precluding all accommodated workers from working paid duty shifts would be untenable, because that approach would reasonably be viewed as a form of discrimination under the *Ontario Human Rights Code*.

A lack of reliable data limits the ability of the OPS to compare our accommodation numbers to numbers from other police services. The OPS will continue to analyze our data and monitor accommodation trends over time. We will also persist in our search for relevant data from other police services against which we can compare our own accommodation rates.

The OPS will continue to value our trained, competent, professional members in an environment where the legally prescribed Duty to Accommodate becomes increasingly onerous for employers. We will continue to analyze accommodation trends within our

workplaces and within our industry to help better understand, assess, and describe the extent to which the number and complexity of accommodation cases increases over time. As the OPS' service delivery model evolves, so will the strategies we employ to balance our operational needs against the ever-changing duty to accommodate landscape. By striving for continuous improvement in the way we manage our accommodations, we will endeavour to retain our position as an employer of choice within our City and our industry.

Document 1



	Ottawa Police Service Functional Abilities Form
A. Name	Cadre
I authorize the completion of this form by n	ny treating health professional and its release to my employer.
Signature	Date
The employer must respond and corThe duty to accommodate is a share	
Once completed, contact the Occupa	reating health professional who will discuss this information with you. ational Health/Safety and Lifestyles professional assigned to you to review the . With this information you can begin to plan an appropriate return to work
 The return to work plan will reflect presume that no clinical contraindic completed in full. 	Il use this information to plan an appropriate return to work. the functional abilities and restrictions you have noted on this form and ations exist for other work activities. Therefore it is critical that this form be d on your examination of the employee and does not require a specialized medical information on this form
C. To be completed by a qualified Medical Pr	ractitioner
1. Date current illness/injury commenced:	DayMonthYear
2. Date you commenced treating this patient	DayMonthYear
General nature of injury/illness:	
Police Specific Activity – (Physical Dem Do you authorize	nands Analysis is available if required) Use of Force/Training Carry / Use of handgun Patrol Duty Yes No Patrol Duty No
	nd a general description of the physical demands of the job have been provided essing if the employee can perform the duties of the position in the current or
D . The following information should be con	mpleted by the Health Professional to identify the patient's overall abilities and restrictions.
Date of Assessment: dd / mm / yyyy	2. Please check one: Patient is capable of returning returning to work with restrictions. Patient is capable of returning to work with restrictions. Complete section E and F. Complete section F.

Ottawa Police Service Functional Abilities Form

E. Abilities and/or Restrictions				
1. Please indicate Abilities that app	ly. Include additional detai	ls in section 3	,	
Walking: Full abilities Up to 100 meters 100 – 200 meters □ Other (please specify) Lifting from waist to shoulder:	Standing: Full abilities Up to 15 minutes 15-30 minutes Other (please specify) Stair climbing:	⊥30 mi □ Other	bilities 30 minutes nutes - 1 hour (please specify) climbing:	Lifting from floor to waist: Full abilities Up to 5 kilograms 5 - 10 kilograms □ Other (please specify) Travel to work:
Full abilities Up to 5 kilograms 5 -10 kilograms Cother (please specify)	Full abilities Up to 5 steps 5 − 10 steps Cher (please specify)	Full 1-3 s 4-6 s □ Othe	abilities teps teps er (please specify)	Ability to use public transit Yes No Ability to drive a car □ Yes □ No
2. Please indicate Restrictions that	apply. Include additional d	letails in section	3	Limited use of hand(s):
☐ Bending/twisting repetitive movement of (please specify)	Work at or above shoulder activity:	Chemical exposure to:	☐ Environmental exposure to: (e.g cold, noise or see	heat, Left Right
Limited pushing/pulling with: Left arm Right arm Other (please specify) 3. Additional Comments on Abiliti	Operating police vehicles and equipment:		s (please specify) ude names of	⊢ Exposure to vibration: ⊢ Whole body □ Hand/Arm
4. From the date of this assessment		200		return to work with your patient?
1-2 days 13-7 days 6. Recommendations for work hours and start date: □ Recommendations □ Recommen	⊦8-14 days egular full-time hours ☐ Mo	14+ days odified hours		art Date: dd / mm / yyyy
F. Date of Next Appointment Recommended date of next appoin	tment to review Abilities a	nd/or Restricti	ons. dd /	mm / yyyy
I have provided this completed Fur	nctional Abilities Form to:	□ Worker	and/or □ Employ	ver
I, the undersigned, duly qualified me have been in attendance regarding the Signature	e above named individual.			reby certify that I
Doctor's Name (please print)				
Address Please direct all inquiries to: Ottawa	Telepl	hone	0624 84 4 7 7 6	O WIG GIT
Telephone Number (613) 236-1222.		Salety, P.O. Bo	ox 9654 Station 1, Ottav	va Untario KIG 6H3