

Ethical Decision Making 2006

*A Resource Manual
for
School Counsellors*



Manitoba School Counsellors' Association
Association Manitoibaine des Conseillers d'orientation

Affiliation:
The Manitoba Teachers' Society

ETHICAL GUIDELINES PUBLISHING INFORMATION AND HISTORY

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Addresses and phone numbers can be found in the Manitoba Journal of Counselling, or from the SAG Secretary, Manitoba Teachers' Society.

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SECTION A

INTRODUCTION

[Historical Overview](#)

Norma Drosdowech

HISTORICAL OVERVIEW

Norma Drosdowech

In 1991, discussions by the Executive of MSCA centered on the increasing concerns raised by Manitoba school counsellors about ethical decisions they faced in their work with students. Many counsellors were expressing a need for support and guidance in making these often difficult decisions. As a result of these discussions, MSCA appointed an Ethical Guidelines Committee to consider these concerns, and to develop and publish a set of guidelines to be made available to all school counsellors in Manitoba.

Committee Members Were:

Co-Chairpersons

Norma Drosdowech..... Victor H. L. Wyatt School, St. Vital S.D. #6

Cathy Hamilton Westgrove School, Assiniboine South S.D. #3

Members

John Cooke St. James Collegiate, St. James-Assiniboia S.D. #2

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Carolynne Pitura..... John Pritchard School, River East S.D. #9

Richard Robertson..... Edmund Partridge Jr. High, Seven Oaks S.D. #7

The committee established as its primary goal the development of clear concise guidelines for the ethical behaviour of school counsellors in Manitoba. The guidelines were to be aspirational in nature, expressing the ideal behaviours toward which counsellors could strive.

The committee began its work by determining the fundamental principles on which the guidelines would be based. They agreed that the principles expressed in the Canadian Charter of Rights and Freedoms, and in the United Nations Convention on the Rights of the Child should be the foundation of ethical decision-making by school counsellors.

The Committee was cognizant at all times that the guidelines must complement the Manitoba Teachers¹ Society Code of Professional Practice. The purpose of the guidelines was to clarify the specific nature of the ethical responsibilities of counsellors in a school setting.

The Committee studied a variety of ethical codes of conduct, including those of the Canadian Guidance and Counsellors¹ Association, the American School Counsellors¹ Association, the Ontario School Counsellors¹ Association, the Canadian Psychological Association and the Manitoba Psychological Association. On the basis of their study of these documents and other readings on ethical issues, the Committee then designed a simple readable document containing

10 articles which reflected the key issues. Approved by the Executive Council of MSCA in January, 1992 the Guidelines were first printed in April, 1992.

Following the publication of the document, the Committee then considered ways to encourage counsellors to develop their understanding not only of the document but also of ethical decision-making processes. The Committee decided to develop a resource manual containing relevant articles, case studies and background information that would assist individuals and associations in their discussions and in their counselling practices. Workshops and Long Distance Education programs on ethical decisions were designed and presented at not cost to counselling associations in Manitoba. The Resource Manual was printed in 1993.

As the Ethical Guidelines Committee continued to offer professional development in Ethical Decision Making, its members became aware of the need for revisions to both the guidelines and the resource manual. A new edition of the *Guidelines for Ethical Behaviour* was approved in October, 1997 by the Executive Council of MSCA. A first revision of the Resource Manual came in 1999. The Ethical Guidelines Committee responsible for the intensive work of revision consisted of:

Chairperson

Louise Welsh Seven Oaks School Division

Members

- Irene Boxer-Meyrowitz Winnipeg School Division
- John Cooke Retired Counsellor, St. James-Assiniboia, S.D.
- Norma Drosdowech Retired Counsellor, St. Vital S.D.
- Sheilah Land St. Boniface School Division
- Carolynne Pitura River East School Division
- Nadia Preyma Retired Counsellor, Winnipeg S.D.
- Richard Robertson Seven Oaks School Division
- William Schulz U. of M., Faculty of Education
- Sandy Tuckwell River East School Division

Following these initial publications, discussion of the issues facing counsellors led the members of the Ethical Guidelines Committee to a discussion of similar issues facing classroom teachers, especially in the areas of confidentiality and record-keeping. Workshops and presentations by key members of the legal community further emphasized these issues.

MSCA Involvement in Development of the Manitoba Teachers’ Society Protocol

In 1996, members of the Ethical Guidelines Committee of the Manitoba School Counsellors¹ Association met with Art Reimer, General Secretary of The Manitoba Teachers Society to discuss concerns regarding confidentiality and record-keeping for both school counsellors and

classroom teachers. Note was made that teachers had expressed their concerns about the lack of a definitive statement governing the whole aspect of confidentiality as it applied to teacher-student relationships.

From this discussion the MTS Ad Hoc Committee on Confidentiality was struck to develop the ³Protocol for Handling issues of Confidentiality in Public Schools²: The committee was composed of:

Chairperson

Jim Johanneson Provincial Executive MTS, Turtle River Teachers Association

Members

Norma Drosdowech..... Manitoba School Counsellors Assn., St. Vital Teachers Assoc.
(retired)

John Fast..... Manitoba Association of Principals, Fort Garry Teachers
Association

Warren Hingley Manitoba Association of Principals, St. Boniface Teachers
Association

Sheilah Land..... Manitoba School Counsellors Assn., St. Boniface Teachers
Association

Louise Welsh Manitoba School Counsellors Assn., Seven Oaks Teachers
Association

Tom Ulrich..... The Manitoba Teachers Society, Past-Assistant General Secretary

The Ad Hoc Committee agreed on the fundamental principles on which the rationale would be based. The protocol complements the MTS Code of Professional Practice and like MSCA¹s ethical guidelines, reflected the principles established in human rights documents such as the Canadian Charter of Rights and Freedoms, and the United Nations Convention on the Rights of the Child.

Following the completion of the ³Protocol² which was approved by the Provincial Executive of MTS, November 22, 1997, the ad hoc committee then took on the task of developing a Resource Manual to provide assistance to teachers in applying and making ethical decisions. The Manual was printed and distributed to all public schools in Manitoba in 1999.

As with the Guidelines developed by MSCA, it must be recognized that absolute answers to ethical decisions are difficult, if not impossible to find, since the issues faced are so complex. The process of assessing the effectiveness of the guidelines themselves and the accompanying resource manuals is an ongoing one, and will continue to require the commitment of both MTS and the members of the Manitoba School Counsellors Association which has played a pivotal role in their development and implementation.

Conclusion: The MSCA Ethical Guidelines & Resource Manual.

The Ethical Guidelines Committee recognizes the need for this ongoing assessment as well as the need for continuing professional development in this important area. In 1997 the committee completed a review of the Guidelines which resulted in improvements in wording and some additions.

From 2004 to 2006 a committee made up of Irene Boxer-Meyrowitz, John Cooke, Carolynne Pitura, and Bill Schulz reviewed and revised this Resource Manual, as well as making one significant addition to the Guidelines in Section 4, Record Keeping.

The Ethics Committee will continue its work under the direction of the Executive of the Manitoba School Counsellors' Association. Feedback from counsellors and from counselling associations is welcomed in this ongoing process.

Norma Drosdowech, retired school counsellor

Former co-chair of the committee to establish MSCA's Guidelines for Ethical Behaviour and its accompanying Resource Manual.

Former member of the ad hoc committee to establish the MTS Protocol and Resource Manual on Handling Issues of Confidentiality in Public Schools.

SECTION B

GUIDELINES FOR ETHICAL BEHAVIOUR

[Guidelines for Ethical Behaviour](#)

MSCA/AMCO

MSCA/AMCO GUIDELINES FOR ETHICAL BEHAVIOUR 2006

*Manitoba School Counsellors' Association
Association Manitobaine des Conseillers d'Orientation*

PREAMBLE

The Manitoba School Counsellors' Association is a Special Area Group of the Manitoba Teachers' Society.

The goals of the Association include:

- ♦ Supporting and promoting school counselling and guidance programming.
- ♦ Providing a representative voice regarding issues that are of importance to school counselling.
- ♦ Promoting and providing professional development.

ROLE OF THE SCHOOL COUNSELLOR

- ♦ A school counsellor must be principally concerned with the personal, social, educational and career needs of the students, keeping in mind the best interests of the student.
- ♦ A school counsellor provides counselling and guidance within an educational setting. Counselling and guidance provide opportunities for students to explore feelings, examine information and consider options for problem resolution and decision making.
- ♦ A school counsellor works in collaboration with school personnel, other professionals, and parents.

BASIC PRINCIPLES

- ♦ This document is intended to provide guidelines for the ethical behaviour of school counsellors.
- ♦ The guidelines complement the Manitoba Teachers' Society Code of Professional Practices by clarifying the nature of the ethical responsibilities of counsellors in a school setting.

The guidelines are based on the following principles:

- ♦ That each person has the right to be treated with respect, dignity and integrity.
- ♦ That each person is entitled to freedom of choice and, with that freedom, must accept responsibility for choices and decisions.
- ♦ That full potential for each person depends upon the development of self-awareness, self-direction and skills in interpersonal relationships, problem solving and decision making.

- ♦ That each person has the right to personal growth and development within the context of the personal liberties set out in the Canadian Charter of Rights and the United Nations Convention on the Rights of the Child.

GUIDELINES FOR ETHICAL BEHAVIOUR

1. PRIMARY RESPONSIBILITY

The school counsellor's first responsibility is to act in the best interest of students.

2. INFORMED STUDENT

The school counsellor shall inform students of the purposes, goals, techniques, and specific policies under which they may receive counselling, at or before the time when the counselling relationship is entered.

Such information includes concerns about confidentiality, legal restraints on counsellors, and the possible necessity for consulting with other professionals.

3. CONFIDENTIALITY

Confidentiality is the obligation not to disclose willingly information obtained during counselling.

Confidentiality is crucial to establishing and maintaining a strong counsellor-student relationship. Therefore, the school counsellor shall attempt to obtain the consent of the student before divulging information received during counselling. Confidentiality is, nevertheless, not absolute.

Some *exceptions* to maintaining confidentiality are:

i) Child Protection

The school counsellor who has reason to believe that a child is or might be in need of protection shall forthwith report the information to the appropriate authorities in accordance with legal obligations pursuant to child protection legislation.

ii) Potential Harm

If behaviour of the student threatens potential harm to self or others, the school counsellor shall take appropriate action to protect the student and/or others.

iii) Legal Action

The school counselor may be required by law to release all counselling records and relevant information.

iv) Consultation & Collaboration:

The school counsellor may consult and collaborate with other professionals for purposes of more effectively helping the student. The school counsellor shall share only such information that will serve the best interests of the student.

4. RECORD KEEPING

The school counsellor shall keep accurate and objective records of counselling sessions to facilitate the provision of services to students. Records shall be kept in a secure location.

School counsellors must be aware of significant implications, related to written or electronic records, in the following pieces of government legislation: (FIPPA) Freedom of Information & Protection of Privacy Act; (PHIA) Personal Health Information Act; and (PIPEDA) Personal Information Protection & Electronic Documents Act, as well as the Public Schools Act and the Manitoba Pupil File Guidelines.

5. GROUP COUNSELLING

The school counsellor shall make clear the purpose of group counselling and the techniques to be used in group sessions. The school counsellor shall strive to protect members of the group from physical or psychological harm.

6. IMPARTIALITY

School counsellors shall be aware of their personal values, and shall strive to remain impartial in assisting students with decision making and problem solving.

7. REFERRALS

School counsellors recognize their boundaries of competence and provide only those services and use only those techniques for which they are qualified by training or experience.

School counsellors shall make appropriate referrals when their professional assistance cannot adequately meet students' needs.

School counsellors shall be knowledgeable about referral resources.

Whenever possible and appropriate, school counsellors shall make referrals with the knowledge and consent of students. At all times, counsellors shall act in the best interests of the students.

8. TESTING AND ASSESSMENT

The school counsellor shall adhere to established standards regarding the selection, administration and interpretation of standardized tests and assessment techniques.

The school counsellor shall consider socio-economic, cultural and ethnic factors in standardized tests.

The school counsellor shall explain the nature, purposes and results of standardized tests in language that is understandable to the students, parents and other professionals.

The school counsellor shall interpret test results with reference to other relevant information.

9. PROGRAMS & SERVICES

School counsellors share with other educators the responsibility for establishing and maintaining counselling and guidance programs which are responsive to the needs of students and the community.

School counsellors shall provide parents with information on the role and function of the school counsellor.

School counsellors shall notify appropriate school officials of conditions which may limit or curtail their effectiveness in providing programs and services.

10. PROFESSIONAL STANDARDS

School counsellors shall strive to attain the standards of formal professional preparation that are recommended by the Manitoba School Counsellors' Association and the Manitoba Teachers' Society.

School counsellors shall strive to maintain professional competence by taking advantage of professional development opportunities.

School counsellors shall accept only those positions for which they are professionally qualified.

11. PROFESSIONAL RELATIONSHIPS

The school counsellor does not knowingly enter or continue a counselling relationship with a student who is receiving counselling from another professional person, without consultation with that other professional, except where the best interests of the student clearly demand such an extraordinary intervention.

In relationships with employers, colleagues, and professional organizations, the school counsellor shall abide by the Code of Professional Practice of the Manitoba Teachers' Society.

The school counsellor shall observe both the spirit and the letter of these guidelines.

SECTION C

ETHICAL DECISION MAKING

[Primary Responsibility](#)

Carolynne Pitura

[Approaches to Ethical Decision Making](#)

William E. Schultz

PRIMARY RESPONSIBILITY

Carolynne Pitura

A counsellor's first responsibility is to act in the best interest of the students with whom he or she is working. Counselling is a personal matter that involves personal relationships. Honesty, sincerity, acceptance, and understanding are basic beliefs that are critical for a successful relationship between the counsellor and the student. The counsellor's genuineness, degree of caring and interest and ability in helping the counsellee are all factors that influence and enhance the relationship in a positive manner.

It is the responsibility of school counsellors to ensure that their primary obligation is to act in the best interest of the counsellee, whether this is in individual or group counselling. The counsellor is concerned with the Personal/Social, Educational & Career needs of the child and encourages the maximum development of each.

It is necessary that counsellors act in ways which will further the best interests of students. Counsellors must be willing to consult with colleagues, keep themselves informed about the laws affecting counselling practice, keep current on counselling methods and practices, reflect on their personal values and how they will impact on the counselling process and be willing to engage in honest self-evaluation. In this capacity, the counsellor also refrains from consciously encouraging the student's acceptance of values, lifestyles, plans, decisions and beliefs that represent the counsellor's personal orientation.

Counsellors subscribe to the following tenets of the counselling process from which professional responsibilities are derived:

1. Each person has the right to respect and dignity as a unique human being and to counselling services without prejudice to person, character, belief or practice.
2. Each person has the right to self direction and self development.
3. Each person has the right of choice and the responsibility for decisions reached.
4. Each person has the right to privacy and therefore the right to expect the counsellor-client relationship to comply with all the laws, policies and ethical standards pertaining to confidentiality.

The counsellor assists in the growth and development of each individual and uses his/her highly specialized skills to ensure that the rights of the counsellee are properly protected within the structure of the school program. In order to facilitate this process, the counsellor needs to adhere to the following responsibilities to students.

The school counsellor:

- a) has a primary obligation and loyalty to the student, who is to be treated with respect as a unique individual;

- b) is concerned with the total needs of the student (educational, vocational, personal and social) and encourages the maximum growth and development of each counselee;
- c) informs the counsellee of the purpose, goals , techniques and rules of procedure under which he/she may receive counselling assistance at or before the time when the counselling relationship is entered;
- d) makes appropriate referrals when professional assistance can no longer be adequately provided to the counselee;
- e) protects the confidentiality of pupil records and releases personal data only according to prescribed laws and school policies;
- f) protects the confidentiality of information received in the counselling process as specified by law and ethical standards; and
- g) informs the appropriate authorities when the counsellee's condition indicates a clear and imminent danger to the counsellee and/or others.

DOCUMENTS REVIEWED

BCSCA Legal and Ethical Guidelines, 1998.

ACA Code of Ethics and Standards of Practice, 1998.

ASCA Ethical Guidelines, 1998.

CCA Code of Ethics, 1999.

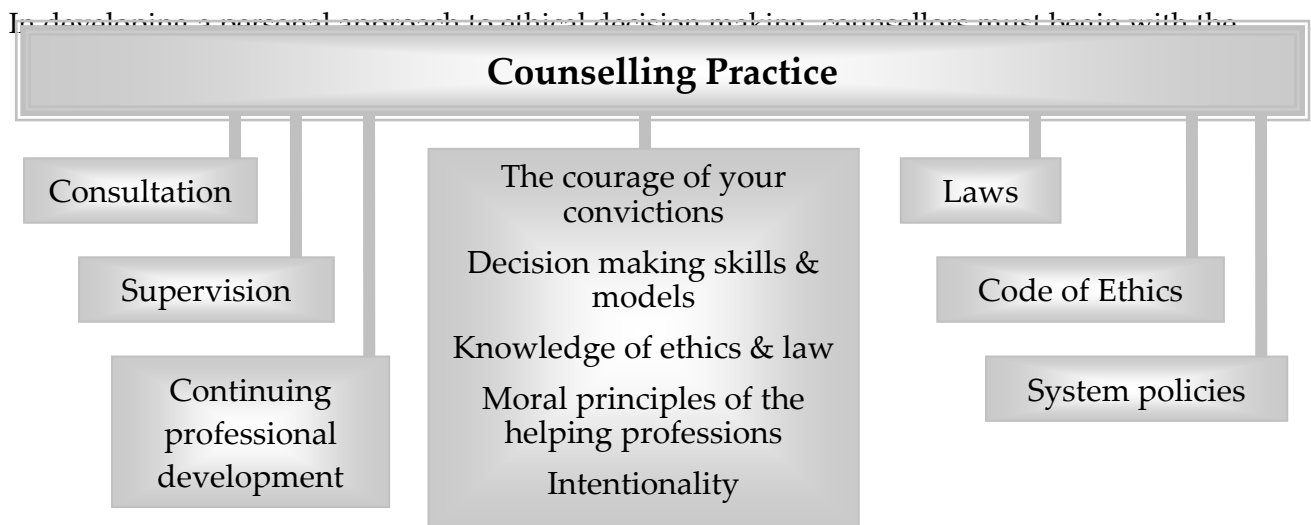
APPROACHES TO ETHICAL DECISION-MAKING

William E. Schulz

I INTRODUCTION

Many counsellors would like perfect, right answers to their legal and ethical issues and dilemmas. Unfortunately, even the best codes of ethics, standards of practice and ethics casebooks cannot provide all the answers. Counsellors can, however, enhance their ethical decision-making by knowing some ethical decision-making models, and developing a model of ethical decision-making for their personal, professional practice.

Remley and Herlihy (2005, p.5) present the following figure to illustrate ethics for the professional counsellor.



intention of wanting to do the right thing. Secondly, counsellors need to be familiar with the basic moral principles. The Canadian Counselling Association has identified the following principles:

- a) sanctity of life,
- b) not willfully harming others,
- c) keeping promises,
- d) responsible caring,
- e) responsibility to society, and
- f) respecting people's rights to determine their own fates.

Another aspect of ethics and professional practice is counsellor understanding of both ethical guidelines and legal mandates. MSCA identifies 12 such ethical guidelines and the CCA has a total of 70 articles in its Code of Ethics.

The last two elements in the Remley and Herlihy “triangle” represent the major focus of this article; namely, counsellors knowing some decision-making models and having the courage of their convictions (virtue ethics) to do the right thing.

Counsellors will be faced with ethical dilemmas where no one, best, clear course of action is present. Cottone and Tarvydas (2003) define these ethical dilemmas as conflicts that arise when competing standards of right and wrong apply to specific situations in counselling. For example:

- ♦ A counsellor finds a client’s issues beyond her/his expertise and refers the client to a counsellor who has much more expertise in that area. The client, however, refuses the referral and counselling is terminated.
- ♦ A parent of a student that the counsellor is counselling phones and asks the counsellor for her/his counselling files on her daughter.
- ♦ You are a school counsellor in a small, remote community. A client comes to you who has recently come to Canada. He is having difficulty adjusting. You have never worked with a client from this ethnic group, and the client only speaks a little English. There are few social services in your community and there are no interpreters available.

A number of authors and professional organizations have produced ethical decision-making models. Three such models are:

- a) the American Counselling Association (ACA) model,
- b) the Canadian Counselling Association (CCA) model, and
- c) the Virtue Ethics models.

II THE AMERICAN COUNSELLING ASSOCIATION (ACA) MODEL

In 1985, the American Counsellors’ Association (The American Association for Counselling and Development) provided funding for a series of video cassettes dealing with ethical issues. In the video, “Confidentiality” The Professional’s Dilemma, “Holly Stadler provides the listener with her views on ethical behaviour and she outlines an ethical decision-making model. Her model consisted of the following four steps:

Step One

Identify competing moral principles (non-maleficence, beneficence, autonomy and justice).

Step Two

In the second step, the counsellor implements a moral reasoning strategy.

There are four sub-steps to this process:

First, it is important that counsellors secure additional information concerning the ethical dilemma. This might include finding out more about the client, studying applicable ethical guidelines and examining relevant Canadian or Provincial laws.

Second, examination of special circumstances surrounding a particular case.

Third, ranking the moral principles. Obviously, the way in which counsellors rank the principles will dictate subsequent actions.

Fourth, consult with colleagues for comments and additional ideas.

Step Three

In the third step of ethical decision-making, counsellors prepare for action. To do this, a typical problem-solving approach is suggested:

- a) identification of hoped-for outcomes, e.g. protect the client or protect confidentiality
- b) listing of possible actions
- c) evaluation of the actions on the client, or related others and on society
- d) identification of any competing non-moral values, e.g., financial or religious considerations
- e) choosing a specific course of action, and
- f) testing that choice in terms of universality, publicity and justice

Step Four

In the final step, counsellors put into action their ethical decision.

Stadler (1985) suggests that if the decision has been difficult, counsellors may need to engage in some ego-strengthening activities such as making a contract with a colleague to carry out the action, or to visualize the completed task with the results being favourable. Next, concrete steps should be laid out on how to complete the task. The action is taken, and finally the action is evaluated.

Two additional publications by the American Counselling Association have enhanced Stadler's earlier work:

- a) Holly Forester-Miller and Thomas E. Davis. (1995). *A Practitioner's Guide to Ethical Decision-Making*, and
- b) Barbara Herlihy and Gerald Corey. (1996). *ACA Ethical Standards Casebook*.

The ACA ethical decision-making model has been expanded to a seven-step model:

1. Identify the problem.

Counsellors determine what is the ethical issue or dilemma. They then gather information about the issue.

2. Apply the ACA Code of Ethics

If the code of ethics provides a clear direction, then the situation is an issue but not a true ethical dilemma. Sometimes different articles in the code are in conflict with each other, and, then, it is necessary to go to the next step in the decision-making process.

3. Determine the Nature and Dimensions of the Dilemma

At this point counsellors are encouraged to read relevant literature (for example, the casebooks from both the ACA and CCA). As well, the relevant ethical principles are considered:

- a) autonomy – allowing clients the freedom to make informed decisions and to plan their own action;
- b) nonmaleficence – doing no harm;
- c) beneficence – doing good;
- d) justice – acting fairly; and
- e) fidelity – upholding the clients trust.

Finally, counsellors should consult their professional organizations and consult with other professional counsellors.

4. Generate Potential Courses of Action.

What courses of action are possibilities? Is it appropriate to consult with the client? Continue to talk with colleagues.

5. Consider the Potential Consequences of all Options and Determine a Course of Action.

Here the question is: What will the consequences be for the client, others and the counsellor?

6. Evaluate the Selected Course of Action

Generally, three tests are used to evaluate a course of action:

Test of Justice – Would you treat others in the same manner given the same situation?

Test of Publicity – Would you want your action reported to the media?

Test of Universality – Would you recommend this same course of action to another counsellor who was facing the same situation?

7. Implement the Course of Action

To prepare for carrying out the action and to be aware of possible set-backs counsellors should consider the following:

What supports are needed to implement the selected course of action? What could interfere with the implementation of the selected course of action? What needs to be done to overcome any barriers to the implementation of the selected course of action?

III. THE CANADIAN COUNSELLING ASSOCIATION (CCA) MODEL

The Canadian Counselling Association model of ethical decision-making is similar in many ways to the ACA model. Mainly, two features were changed or added to other models: first, different words were used for principles such as non-maleficence, beneficence and fidelity; secondly, a feeling/emotional dimension (virtue ethics) was added to the largely cognitive/rational decision-making steps used in most other models.

The CCA model (Schulz, 2001, p. 11-13) consists of the following six steps:

1. The key ethical issues of a particular situation are identified.
2. The CCA Code of Ethics is examined to see if the ethical issue is dealt with. If there are appropriate articles (e.g. on confidentiality or informed consent), following the articles may be sufficient to resolve the ethical dilemma. If the ethical problem is more complex, the following further steps will be needed.
3. The third step consists of examining the moral and ethical principles that are important in the situation. The principles in the three models could be condensed to include an examination of the following six principles:
 - a) Respect for the dignity of the persons
 - b) Not willfully harming others
 - c) Integrity in relationships
 - d) Responsible caring
 - e) Responsibility to society
 - f) Respect for self-determination.
4. This step consists of choosing the most important principles and relevant ethical articles and beginning to implement some possible action by:
 - a) Generating alternatives and examining the risks and benefits of each alternative;
 - b) Securing additional information and/or consulting with colleagues
 - c) Examining the probable outcomes of various courses of action.

5. Until this point, this decision-making. Time permitting, counsellors should use emotional decision techniques such as the following:
 - a) Quest – a solitary walk in the woods or park where your emotions are allowed to interact with the ethical dilemma being faced;
 - b) Incubation – “sleep on it,”
 - c) Time projection – projecting the ethical situation into the future and thinking about the various fantasized scenarios.

At this step counsellors can add some elements of virtue ethics, particularly considering all the options that will best help and show greatest caring for the client.

6. The final step consists of taking some action. Counsellors should follow a concrete action plan, evaluate the plan, and be prepared to correct any negative consequences that might occur from the action taken.

A brief example will help to show how these six steps might work in actual practice. Questions are presented to help counsellors consider each of the steps in this six-step, integrated approach.

A high school counsellor has seen a seventeen-year-old, Grade 11 student, John, on numerous occasions. Initially, these counsellor visits came as a result of teacher referrals. Teachers found that John was a “nuisance in the classroom.” Over the months a good relationship developed between the counsellor and John, and frequently John just dropped in to chat.

On one such occasion, John talked about his part-time job at a hardware store and how he made quite a bit of extra money “lifting” the occasional article from the store and selling it. When the counsellor got more of the details, he was convinced that considerable theft was involved. He didn’t know what to do, since he had assured John on more than one occasion that “Things said in my office will never leave this office”

What are the key ethical issues in this situation?

The counsellor had promised confidentiality, yet the student’s actions were illegal. In the long run, the thefts would probably be discovered and John would be in serious trouble.

What ethical articles are relevant to this case?

The ethical articles relating to confidentiality provide for a respect for privacy, unless there is danger to the client or to others. The ethical articles also state that the counsellor’s primary responsibility is to help the client. Furthermore, the counsellor needs to inform the client of the exceptions to confidentiality before the counselling begins.

What ethical principles are of major importance in this situation?

Six principles were identified earlier, and the following principles are important in John’s situation: integrity to society, and respect for self-determination (Schulz, 1994).

What are the most important principles and what are the risks and benefits if these principles are acted upon?

The counsellor examined each one of the principles and considered what would happen if he reported the theft, what would likely happen if he kept quiet and continued to work with John, and how could he best help John. Without identifying John, the counsellor discussed the situation with another counsellor, and was told that “to cover yourself you’d better tell the principal.” The counsellor felt at this time that “responsible caring” and responsibility to society” were of greatest importance. Before acting, the counsellor asked himself a fourth question:

Will I feel the same way about this situation if I think about it a little longer, and who shall I be in order to show the greatest integrity and caring for my client?

The counsellor decided to “sleep on it” and think deeply about what would be best for the client.

What plan of action will be most helpful in this situation?

The counsellor made an appointment with John and informed him that he would have to break confidentiality, since he felt that he just would not be acting responsibly if he allowed the stealing to continue. He tried to convince John that in the long run he might actually be helping him as well. John was given several options by the counsellor regarding the reporting of the theft himself, by the counsellor, or with the two of them seeing the appropriate authorities together.

Some counsellors like to develop a decision-making chart to help them with their ethical dilemmas. John’s case could be presented as follows:

Options For Action	Benefits	Risks	Probable Outcomes
Option 1 Avoid the issue	May be the easiest	The problem is not resolved.	Counsellor could lose his job.
Option 2 Keep counselling John and encourage him to make restitution.	I can keep using my professional judgment as to what is best for John.	John comes for counselling but does not provide restitution.	Things might work out, but what about the owner of the hardware store.
Option 3 After telling John, report the activities to the appropriate authorities.	In the long run help John to act more responsibly.	Lose John as a client. Possibly, other clients.	Initially, John would be angry, but would see that the stealing had to stop

IV. VIRTUE ETHICS APPROACH

The ACA and CCA ethical decision-making models are based on principle ethics. Virtue ethics start from a different premise. According to Remley and Herlihy (2005, p.7ff), ethical decision-making involves more than moral actions based on principles; it also involves traits of character and virtue. Virtue ethics focus on the counsellor as a person. Virtue ethics, then are about subjective qualities, characteristics, habits and traits that lead a counsellor to a particular choice and subsequent action. With virtue ethics, counsellors do not follow established articles, rules or guidelines, but rather follow what a virtuous person would do under the circumstances. Ultimately, counsellors ask the question "Who shall I be?" Oakley (1996) outlines the main features of virtue ethics as follows:

- a) An action is right if and only if it is what an individual possessing a virtuous character would do under the circumstances;
- b) A description of admirable human traits are needed before a determination can be made about what is right in a given situation;
- c) Virtues are valuable for their own sake and not for the outcome they may provide;
- d) Virtues are objectively good. That is, being compassionate and caring is virtuous whether a person wants to be caring or not.

Feminist ethics have also contributed a great deal to the issue of care in ethical decision-making. In the 20 years since Carol Gilligan's (1982) book, *In a Different Voice* was printed, much has been written about the issue of care its relation to ethical issues. Ethical decisions are influenced by a concern for keeping and nurturing relationships. According to Gilligan, Ward and Taylor (1988), men are more likely to make decisions on ethics based on justice. Justice implies that good solution be found. Women see ethical decisions more in terms of care; namely, that clients be protected from harm. Thus, relationships and care are more important than simple justice. Feminist ethics are far more likely to see ethical decision-making as a grey area, with many possible solutions. But what is first and foremost is the ethical article (CCA,B1) of how best to help and care for the client.

In summary, the virtue ethics model believes that counsellors are motivated to be virtuous and caring because they believe it is the right thing to do. Virtue ethics recognizes the importance of emotions in decision-making. Finally virtue ethics believes counsellors must know themselves, their convictions, prejudice and attitudes.

Although a step-by-step methodology is much more difficult with virtue ethics, the following phases are an attempt to suggest some process in using virtue ethics.

Phase One: Examining the Situation through Personal Awareness

Counsellors following virtue ethics approach believe that emotion will inform their judgment. Counsellors might ask themselves questions such as:

1. What emotions do I feel or I consider the ethical dilemma?

2. How are these emotions influencing me (for example: emotions such as fear, responsibility, ambiguity and self-doubt)?
3. What are my emotions telling me to do?
4. Who do I want to be?

Phase Two: Examining the Situation through a Social/Cognitive/Emotive Process

Questions that can be considered during this phase include:

1. How will my decision affect other stakeholders in this ethical dilemma?
2. Do I need more information before I can make a decision?
3. What are the positive and negative consequences for each option that I have?
4. What decision would I feel best about publicizing?
5. Will my decision change if I share it with colleagues?

Phase Three: Examining Competing Values

Counsellors need to prepare themselves to recognize their values and the implications of their values in ethical decision-making:

1. What do I value most in my work as a counsellor?
2. How can my values best show caring for the client in this situation?
3. How can emotional decision making exercises (imagery, incubation, vision quest, meditation) help me decide?
4. What decision would best define who I am as a person?
5. Am I willing to act on my values?

Phase Four: Planning and Taking Action

The last question in Phase II pointed to this action phase.

1. What do I need to do to best plan and take action?
2. What are some counter measures that I may have to take?
3. How can I best evaluate my course of action?

This essay was an attempt to outline three different ethical decision-making models. The purpose is to provide the school counsellors of Manitoba with a working document of how many other counsellors attempt to resolve ethical dilemmas.

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SECTION D

CONFIDENTIALITY, INFORMED CONSENT AND RECORD KEEPING

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CONFIDENTIALITY AND THE SCHOOL COUNSELLOR

William E. Schulz

INTRODUCTION

A high school student, Frank, gradually developed a good relationship with his counsellor and having been told that their conversations were confidential, Frank told his counsellor that he had made a good deal of money selling drugs both in his and other schools. Frank said he had made a lot of friends through his drug sales and he now had money to buy many things he wanted. Upon hearing Frank make this disclosure, the counsellor showed a great deal of surprise and disappointment, and Frank quickly reminded his counsellor that “you promised to keep everything confidential.”

One suspects that this counsellor was very lax in his “informed consent” to students and probably did not inform Frank of the limits of confidentiality. Putting this aside, this case does raise a number of additional issues related to confidentiality. The counsellor’s “first responsibility is to act in the best interest of students.” (MSCA Guidelines for Ethical Behaviour, 1997) Should Frank’s counsellor continue the developing counselling relationship and hope that Frank will alter his behaviour as he begins to understand more fully his illegal, destructive action? Would this action be in “the best interest” of Frank? MSCA’s Guidelines also state that if “the student threatens potential harm to self or others” that something needs to be done. Does the protection of students who are buying drugs from Frank take precedence over a promise to keep all interviews confidential? Possibly, there is even a middle approach between continuing to counsel Frank and reporting Frank’s drug selling activities. Maybe Frank can be convinced by the counsellor to stop selling drugs, knowing that if he does not, the counsellor will inform both the school principal and Frank’s parents.

These questions and issues, and many others, arise when confidentiality in counselling is considered. Confidentiality is crucial in establishing and maintaining a strong counsellor/client relationship.

Confidentiality relates to matters of professional ethics. Confidentiality protects clients from unauthorized disclosures of any kind on the part of the counsellor without first obtaining the permission of the client. Privileged communication is a legal right which protects clients from having any confidences revealed during legal proceedings. The only privilege granted in Canadian law is that which exists between a lawyer and client. When legal issues come into conflict with ethical issues, the law prevails.

Several Canadian court cases in the last decade clearly point out the differences between privileged communication and confidentiality. In the *MacDonald vs. MacDonald* case (January 14, 1987 in British Columbia) an application was made where a wife and husband, experiencing marital difficulties, would attend counselling and that all discussions with the counsellor be privileged for purposes of possible future litigation. The husband agreed to attendance for counselling but refused to agree that all discussions should be privileged. The Court did not

grant privilege saying that even if there was a greater prospect of successful counselling with privilege, this possible greater success was not sufficient reason to grant a new kind of privilege for the future.

In another case (*R. vs. Fehr*, December 8, 1983), an accused, charged with doing an indecent act, talked to a counsellor. This conversation was ruled not privileged as it did not fall within the ambit of solicitor-client privilege. The counsellor was not a barrister or solicitor, nor did he purport to act for a lawyer. Wigmore's four conditions necessary to be met for establishing privilege had not been satisfied in this case. These four fundamental conditions are:

- i) The communications must originate in a confidence that they will not be disclosed.
- ii) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation.
- iii) The relation must be one which in the opinion of the community ought to be sedulously fostered.
- iv) The injury that would inure to the relation by the disclosure of the communication must be greater than the benefit thereby gained for the correct disposal of litigation.

Counsellors do not have privileged communication and confidentiality is not absolute.

THE IMPORTANCE OF CONFIDENTIALITY

School counsellors view confidentiality as being essential to establishing counselling relationships with students in the schools. Students must be free to talk about their issues and concerns, knowing that counsellors can be trusted with their stories.

Bok (1983) provided a strong rationale for confidentiality, describing four key premises on which confidentiality is based. With the first premise autonomy, school counsellors respect students' ability to make their own choices in an atmosphere of trust and caring. Part of this autonomy includes the students' right to decide who should have access to their information. Maintaining confidentiality shows respect for counselling relationships and is essential in school counselling. A third premise has to do with what Bok called a pledge of silence. Counsellors have promised to keep matters confidential and have promised to work to protect students' secrets from disclosure. The fourth premise on which confidentiality is based deals with its utility. That is, confidentiality benefits society, since students would be reluctant to seek counselling without knowing that their stories would be kept secret.

EXCEPTIONS TO CONFIDENTIALITY

There are a number of factors that complicate issues of confidentiality. Counsellors need to pay attention not only to confidentiality but also to the obligations they have to provincial laws, parental rights, school and divisional policies and the 'duty to warn.' The following four cases presented by Schulz (2000), point to some of the exceptions and issues related to confidentiality for school counsellors.

Fifteen-year-old Sally has been referred to the high school counsellor, Ms. Smith, by her English teacher because her grades are falling and she is very inattentive in class. She will end up failing the course if she doesn't do something to pull up her grades.

During the course of the conversation between Sally and Ms. Smith, it becomes evident that Sally's performance in her other classes is similar to her performance in her English class, and that she will more than likely fail the year if she isn't able to improve her grades. Sally discloses that she has been feeling depressed lately and cannot seem to concentrate on her school work. After further probing, it becomes evident to Ms. Smith that Sally is being sexually abused by her father. Sally admits to the abuse but says she is afraid of what might happen to her if her father finds out she has disclosed this information to anyone.

Ms. Smith tells Sally that she is required to report the matter to a social agency (in Manitoba, this would be Child and Family Services) and assures her that it is in Sally's best interest that she do so. Ms. Smith then calls Child and Family Services and waits with Sally for the social worker to arrive.

In this case, the counsellor must, by law, report the abuse of Sally to Child and Family Services. It is important to remember that it is the counsellor's responsibility to report Sally's situation, but it is not the counsellor's task to conclude whether abuse has actually taken place or to get involved in the actual investigation.

Sixteen-year-old Mary Lou made an appointment with Ms. Jones, the high school counsellor, to discuss what courses she should take in Grade 12 in order to prepare her for entering university the following year. During the course of their conversation, Mary Lou disclosed to Ms. Jones that she was having problems with her mother because her mother was always trying to control her life. Because she was of the belief that whatever she told Ms. Jones would be held in strictest confidence, she further disclosed that she has been lying to her mother, telling her that she was studying at the library in the evenings when in fact she was spending time with a young man whom, she felt, her mother would disapprove of.

Shortly after the session was over, Ms. Jones made a call to Mary Lou's mother and informed her of Mary Lou's involvement with the young man and how she has been lying to her. Ms. Jones hoped she would be helping Mary Lou by informing her parents.

In this second case, the counsellor, Ms. Jones, very inappropriately broke confidentiality, thinking that she would be helping Mary Lou by telling her parents. Mary Lou came to the counsellor to discuss issues in her life and seek some help with her concerns. Instead of helping, the counsellor broke confidentiality without Mary Lou's consent and in so doing took away

Mary Lou's autonomy and any opportunity for future self-disclosing from Mary Lou as well as other students in the school.

A 15-year-old student in a large high school had begun to see his school counsellor because of problems he was having with his girlfriend. The counsellor enjoyed the relationship he had with the students in the school and felt that he had gained their trust and respect. During one of these sessions, the boy expressed to the counsellor that many of the students trusted him and felt that he was really on their side. He also told the counsellor that he and his girlfriend had tried "crack" on several occasions. She had at first been hesitant to try the drug but after some pressure she gave in and in fact enjoyed it. The counsellor discussed the dangers of the drug as well as the strain the boy was putting on his girlfriend and their relationship.

The counsellor debated whether he should inform the girl's parents or the principal but felt that the trust he had gained among the students was very important. He decided to continue his sessions with the boy and did not inform the responsible authorities. He was informed several days later that the girl had nearly died of an overdose of drugs at a party on the weekend. The counsellor was given a short-term suspension from his position at the school for not following school's policy on reporting drug use.

In this case, the counsellor had a difficult decision to make; namely whether to risk the possibility of alienating future student disclosures with the need to report a potentially dangerous situation. Warning of danger must be presented in such a way that it is seen as a caring act on the part of the counsellor. Schulz (2000) commented on how the famous Tarasoff court decision helped counsellors in both the United States and Canada understand how to act when there was danger to others. As with other situations where confidentiality must be broken, counsellors should tell their clients that they have a responsibility to warn people in danger.

At the same time, counsellors should be aware that there may be certain repercussions that result from informing responsible authorities. There is the danger that other clients may feel that the counsellor cannot be trusted, or the client may even feel a sense of anger or betrayal toward the counsellor.

A suicide note was left by a Grade 7 student indicating her intention of suicide. The note was brought to the attention of the guidance department head since the girl's counsellor was out of the building at the time. Later, the counsellor spoke to the girl. The counsellor contacted her parents regarding the note. They did not seem too concerned but agreed to phone the counsellor or school principal if help was needed. Next, the counsellor met with the student and talked to her about her note and her suicide intention. It seemed that she had considered suicide, but had not thought of how to carry out the plan. She did have a very close friend, someone that she trusted and

felt that she could talk to at all times. The counsellor gave the Grade 7 student the phone number of a suicide prevention centre, as well as her own home number to call.

Even if the student in this case argued that she can do what she wants to with her life, counsellors have a duty to protect suicidal clients. Not every mention of suicide justifies reporting, and ascertaining the risk of suicide is a difficult one for most school counsellors. Counsellors must see suicidal clients as “crying for help” and should be aware of danger signs such as the following:

- ♦ a suicide threat
- ♦ earlier suicide attempt
- ♦ a suicide plan
- ♦ depression
- ♦ giving away prized possessions
- ♦ feelings of hopelessness

These four cases represent situations where school counsellors have a duty to report or to warn others of possible danger. It is the school counsellor’s responsibility to clarify to students whom they are counselling that they have ethical and legal restrictions on confidentiality.

There are several other areas where school counsellors have limited confidentiality. Counsellors may share information in the interests of providing good counselling services. Occasionally counsellors may have to consult with other professionals regarding a client. At times, secretaries or clerical staff may have access to confidential material. As well, other helping professionals may need information; information that the student/client has given permission to share. Legal considerations take precedence over ethical considerations and when a court orders a counsellor to make client records available, the counsellor must comply.

As part of the written consent process that counsellors are encouraged to follow, they should make sure that students know about their counselling procedures and policies, and about their confidentiality policies and their exceptions.

ADDITIONAL CONFIDENTIALITY ISSUES FOR SCHOOL COUNSELLORS

School counsellors may face a number of additional confidentiality issues. At all levels in school, but particularly at the early years level, teachers will constantly be asking the counsellors questions such as: “How is Susan doing?” “Have you talked to Freddy’s parents?” “Have you discussed Carolyn with the school nurse?” “What did the psychologist tell you about Frank?” Most of the questions come from caring, concerned teachers, but the questions can place the students’ confidentiality in jeopardy, if the counsellor provides answers to the probing questions. School counsellors need to inform teachers, administrators, school secretaries and others of the requirement to respect the privacy of all school children.

Another confidentiality issue, when working with children, relate to the understanding children have of confidentiality and informed consent issues. School counsellors must use simple language and provide concrete, understandable examples so that even children understand that confidentiality belongs to them and not their parents, teachers or others.

The Canadian Counselling Association (2001) has compiled a number of suggestions for counsellors working with children. The Association recognizes that counsellors working with children face the difficult task of balancing children's right to confidentiality with parents' or guardian's right to information. CCA suggests the following:

- a) Parents and guardians do not have an absolute right to know all the details of their child's counselling, but rather, each request should be evaluated on a 'need to know' basis.
- b) Each school, as well as other work environments which provide counselling services to children, should establish a protocol which should involve counsellors and other appropriate persons in adjudicating parental or guardian requests for information about their child's counselling information. In Manitoba, each of the 36 school divisions has an Access and Privacy Coordinator who makes decisions regarding the release of counselling information. Remley and Herlihy (2005, p. 199) suggest the following steps when considering disclosure:
 1. Discuss the request with the minor to determine whether the child is willing to disclose.
 2. If the child is unwilling, try to educate the adult about the nature of the counselling relationship, assure the adult they will be informed if the child is engaged in any behaviour that might lead to harm, and attempt to persuade the adult that the child's interests are not served by disclosure.
 3. If the adult continues to demand disclosure, schedule a joint session with the adult and the child and hope to resolve the matter between themselves.
 4. If none of these interventions works, finally inform the child before making the disclosure over the child's objections. (In Manitoba, this last step would include disclosure only after a decision was made by the Access and Privacy Coordinator.)
- c) As a child grows and matures, the parent's right to know will diminish and may even terminate when the child achieves the capacity and sufficient understanding to give informed consent. This sentiment has been well-stated by Stuart Whitley (1992), the former Assistant Deputy Attorney General of Manitoba:

"...the rights of students should be approached presumptively from the perspective of full Charter protection, but qualified by the idea that some issues inherent to children and their care and education require some limits that otherwise would not obtain for adults. These limits have to do with relative competencies of mature and socially aware children, and not with any arbitrary 'age-defined' limits, or, for that matter, intuitively-based assumptions of educational professionals."

- d) Counsellors who work with children should be familiar with and guided by the statutory requirements within the province where they work regarding of confidential information related to children. This includes being informed of emerging ethical and legal obligations and attitudes with respect to the privacy rights of children. For example, in Manitoba, school counsellors are justified in breaching confidentiality with students who are HIV positive and whose behaviour is putting others at risk.

New technologies present additional challenges for school counsellors. Internet counselling, other uses of the computer, faxes, e-mail and cellular phones are not secure means of communication, and counsellors need to take extra precautions when using technology, to safeguard the privacy of clients. Sampson (1996) made several recommendations regarding computer storage of client records:

- a) confidential client information should not be maintained on a computer network;
- b) identification information of clients needs to be treated as confidential;
- c) passwords for confidential data should be kept obscure, and
- d) passwords for client data should be changed regularly.

CONCLUDING COMMENTS

School counsellors will continue to encounter the dilemmas related to confidentiality, since it is impossible to give pat answers for each issue. Constant dialogue and collaboration are very important when dealing with difficult issues surrounding confidentiality. In addition, Sumarah, Lehr and Wheeldon (2002) discuss “discernment” as a process used to arrive at a decision as to the sharing of confidential information. School counsellors may well ask themselves questions such as the following:

- ♦ Will my breaking confidentiality help the client?
- ♦ Will my talking to another professional be helpful?
- ♦ What has influenced me in sharing confidential information?
- ♦ Why am I sharing even anonymously?

Dealing with these questions is discernment; both a mind and heart process that takes into consideration external forces, such as legal requirements, codes of ethics and school policies, but also internal forces such as a knowledge of counsellor thoughts and feelings on difficult issues. Sumarah, Lehr and Wheeldon (2000, pp. 88-89) suggest dealing with discernment issues related to confidentiality and other issues in the following way:

1. Decide in whom you have trust and confidence.
2. As you present facts and feelings to other(s), listen to yourself to see what surfaces for you.
3. Welcome questions and comments that reflect concern for the client, others and you.

4. If you disclose information, what do you think the situation will be for the client, others and you? Are you fearful of any reactions? Are your feelings of insecurity and inadequacy getting in the way of a good decision?
5. Once you have made a decision, you need to study and understand what happened. You want to learn from the process.

Putting time and thought into confidentiality issues for school counsellors is sound professional practice.

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EFFECTIVE RECORD-KEEPING AND SAFE-GUARDING CONFIDENTIALITY

Norma Drosdoweck

INTRODUCTION

As I reviewed articles that I had written about record-keeping and confidentiality as a member of MSCA's Ethics Committee and the MTS Ad Hoc Committee on Confidentiality, I was aware that these issues remain critically important to all those who work with students in a public school setting. I recognized, however, that my perspective today had taken on a more holistic aspect. While it is true that school counsellors bear a special responsibility for safeguarding confidentiality, that responsibility must be more broadly shared. I share these thoughts with you in the hope that counsellors will be the key personnel in the development of a school milieu which fosters respect for the individual's right to control the sharing of personal information with others.

RECORD-KEEPING AND CONFIDENTIALITY

It is imperative that all those who work within the school: administrators, classroom teachers, student services staff, support personnel, school volunteers, student teachers, substitutes, etc. be aware of the importance of keeping effective records, storing them carefully, and protecting the confidential information they may contain.

It is equally important that the recording of personal information not be seen as less valuable or less appropriate than the recording of academic information. Both are necessary for school personnel to meet the needs of all students. Both are necessary components of professional behaviour.

Schools must model respect for confidentiality, acknowledging that information about the child belongs to the child. Schools must also clarify with children that teachers are part of a team which includes parents, administration, teachers, specialists and outside resources. They should be made aware that information may be shared with other members of the team to ensure that all students' needs are being met.

Parents and students must be made aware of the reasons for and the process by which information is recorded, shared and stored. Whether by a pamphlet on Record-Keeping and Confidentiality or through public information sessions, parents should develop a clear understanding of this important topic. Classroom teachers, administrators, instructional assistants and student services personnel all have an obligation to explain to groups of students and to individual students what will be recorded about their academic achievement, their social development and their behaviours in the school setting, and when and how that information might be shared with others.

Parents should be encouraged to understand the nature of students' relationships with school personnel, especially counsellors, and to understand the many benefits to students when significant information can be shared privately in an attempt to find solutions to difficult problems. Parents should be assured that teachers and counsellors will always report incidents which indicate a student is in need of protection, or which present a danger to the student or others.

It is important to emphasize that statements made for school records should be accurate, truthful, verifiable, and without personal bias or prejudice. Teachers and counsellors may also find it helpful to make private notes that may include subjective impressions, feelings, hunches, etc. These should be kept perfectly confidential and not included in the institutional records of the school. They are the personal property of the educator, but it must be noted that any part or all of the records can be subpoenaed by a court of law.

School divisions need to develop policies about school based records, and all school personnel must have opportunities to gain information about them and to consider ways in which they can record information effectively, store it safely, and share it appropriately.

The following tips may be helpful in this process:

1. Developing an understanding of school records is an ongoing process. It is helpful to indicate to students your intention to record information and to clarify the record with them. Tell parents, or other educators if you are going to make a record of information received during a phone call.
2. Teachers, counsellors and family life educators have a special responsibility of speaking with students about questions of confidentiality. Students need to be aware of the necessity for adults to report concerns about children's personal safety. It must be emphasized that it is never acceptable to promise confidentiality in the hope that a student will disclose abuse. Students have the right to know the potential consequences of sharing personal information.
3. All records must be safely stored. Do not leave reports on your desk or in areas where they can be read by anyone else, including students. A locked filing cabinet or locked drawer should be used.
4. Develop policies for Student Services records. Are they being taken home? Are duplicate copies being made and circulated? Who has access to them? Establish clear policies and adhere to them!
5. Do not assume records are safe if kept on a computer. If records are kept on a computer, be sure that they are not accessible to anyone else. If a secretary is putting your notes on a computer, make sure that she/he returns or destroys the original notes and that her/his computer has proper security.
6. Do not carry on staff-room or other school phones, in the hallways or other public areas where persons who do not need to know can overhear what is being discussed.

7. Do not discuss a student, a parent, or a colleague with others in the staff room – no matter how much you need to unload your frustrations. Ask a colleague to move with you into a private space so that you can “get things off your chest.” Do not name individual students or colleagues when discussing education issues with family or friends.
8. Do not make individual students names known to others, e.g. when the office calls students down to see someone on the Student Services team, the secretary should call them to the general office and then direct them to the appropriate office.
9. Do not share information without permission. Inform students, parents, colleagues if you are going to share confidential information with others (with the special exception required for disclosure of abuse). Never discuss the behaviour of one student with the parents of other students without permission.
10. When consulting with your professional colleagues, share the information verbally, rather than giving them copies of your notes. Make sure you have made it clear that these records are confidential and should not be shared with anyone else, including the parents of the child.
11. Do not share confidential information unless professionally or legally required to do so. Work to establish divisional policies about when and how such information will be shared with police, medical personnel and social service agencies.
12. When required to share information, do so appropriately. Do not keep your records “secret.” To do so is unethical and if you ever appear in court and are asked if you have no other records, you will have to admit to their existence or perjure yourself.
13. Be fully cognizant of the professional guidelines that have been developed to assist you with ethical decision making regarding issues of confidentiality and record-keeping: Manitoba School Counsellors’ Association – Guidelines for Ethical Behaviour; Manitoba Teachers’ Society – Protocol for Handling Issues of Confidentiality in Public Schools.

COUNSELLOR RECORDS: SEEKING SOLUTIONS

Cameron Symons

INTRODUCTION

This article outlines the problem that counsellors experience in trying to respect student confidentiality, while at the same time respecting legal and ethical obligations regarding student records. Behind this dilemma is the undercurrent of fear that if the records are accessed later under Freedom of Information rules, or if they are subpoenaed by the courts, some of the information contained in the records may bring harm to the student. These issues will be addressed by exploring the need for counselling records, the legislative requirements for record keeping, ideas on information and record management, and ideas on how to protect your students and yourself as a counsellor.

NEED FOR RECORDS

During the 1990's, the fear of counselling records being used against clients caused many sexual abuse counselling centres to destroy their records in order to protect their clients. The situation of the Sexual Assault Centre of Windsor showed the results of this policy. In this case, an adult sought advice from the Centre on how to file charges against a former teacher in regard to sexual abuse which occurred some thirty years earlier. When the case went to court, records of this contact were requested but, since the Centre had a policy to destroy records, none were produced. The lawyer for the defendant claimed that the lack of records prevented his client from the right to make a full answer and defense. The judge agreed and stayed the charges.

On appeal, the decision was overturned by the Ontario Court of Appeal, on the basis that so much other evidence existed, the lack of the counselling records was not a serious issue. The case was appealed then to the Supreme Court of Canada who sided with the original trial judge, saying that the defendant's rights were compromised and ordering that the charges be stayed. Tragically, a victim who had a large base of evidence and statements from other sources, never got to have them heard in court because of the actions of the Centre; actions which had exactly the opposite effect of the one intended.

It seems clear that in order to best support our clients, we must maintain the kinds of records that will support them if the case ever goes to trial. We also have reason to have more confidence that they will be used responsibly since the proclamation of Bill C46 in 1997. This Bill gives judges the right to decide what parts of the record will be released to a defendant's lawyer. This seems to provide an extra measure of comfort for counsellors who may be worried about release of information that may be harmful to the client or others.

LEGISLATION AND REGULATIONS AFFECTING COUNSELLORS

Counsellors are not just affected by the court system either. In addition to legal precedents, there are a number of legislative regulations influencing the work of school counsellors. They include:

- ♦ The Child and Family Services Act;
- ♦ The Public Schools Act;
- ♦ The Educational Administration Act;
- ♦ The Youth Criminal Justice Act;
- ♦ The Freedom of Information and Protection of Privacy Act (FIPPA);
- ♦ The Personal Health Information Act.

Manitoba Education, Citizenship and Youth has also produced documents which serve as guides to counsellors on issues relating to information and records management. They include:

- ♦ Guidelines on the Retention and Disposition of School Division/District Records;
- ♦ Manitoba Pupil File Guidelines.

OUTLINE OF MANITOBA PUPIL FILE GUIDELINES

The Pupil File Guidelines describe the different components or sub-files of a pupil file. These components include:

- ♦ The Cumulative File;
- ♦ The Pupil Support File;
- ♦ The Youth Criminal Justice File;

Within the Cumulative File component, the following items are included:

- ♦ Identification information;
- ♦ Parent/Guardian information;
- ♦ Citizenship;
- ♦ School history;
- ♦ Relevant health information;
- ♦ Academic information – marks, attendance, awards;
- ♦ Correspondence and legal documents.

The Pupil Support File component contains the following information:

- ♦ Special Education/Resource information;
- ♦ Counselling information;

- ♦ Clinician reports, meeting notes, etc;
- ♦ Referrals to other agencies;
- ♦ Diagnostic testing results;
- ♦ Reports from service providers, e.g. Child Guidance Clinic, hospitals, treatment facilities.

The Youth Criminal Justice File component may contain:

- ♦ Court order information;
- ♦ Information about the offence for which the order is made;
- ♦ Terms regarding attendance or other matters;
- ♦ Risk information. For example: prior offences, others who may be at risk, behaviour patterns, recommendations regarding safety for staff and students.

ACCESS TO THE PUPIL FILE

Access to the Pupil File is governed primarily by four Acts: The Public Schools Act; The Freedom of Information and Protection of Privacy Act; The Personal Health Information Act; and The Youth Criminal Justice Act. Each of these Acts has something to say both about access by the student, and access by the parent or guardian.

Access by a Student

Public Schools Act

If a student is at the age of majority, he/she may access the file unless:

- ♦ Disclosure might cause an invasion of the privacy of a third party;
- ♦ Disclosure could be detrimental to the education of the pupil;
- ♦ Disclosure could cause physical or emotional harm to someone;
- ♦ Disclosure could interfere with an enactment or investigation.

Freedom of Information and Protection of Privacy Act

Exceptions include:

- ♦ If the disclosure would cause invasion of a third party's privacy (17);
- ♦ If disclosure would be harmful to individual or public safety (24);
- ♦ If disclosure would be harmful to law enforcement or legal proceedings (25).

What constitutes an invasion of privacy under FIPPA?

It is significant to note that FIPPA defines 18 conditions (17-2,3) that would constitute an invasion of privacy (in this case, the privacy of a third party). Included in these conditions are:

- (e) The personal information has been provided explicitly or implicitly in confidence;
- (h) The disclosure would be inconsistent with the purpose for which the personal information was obtained.

Personal Health Information Act

Exceptions include:

- ♦ If disclosure may endanger the mental or physical health or safety of a person;
- ♦ If disclosure may reveal information about another person who has not consented to the disclosure;
- ♦ If disclosure could identify a third party who supplied the information in confidence under circumstances where confidence could be expected;
- ♦ If the information was compiled for legal purposes.

Youth Criminal Justice Act

Pertinent conditions include:

- ♦ The school may not disclose any information to a young offender;
- ♦ Only agencies with a legal role may disclose information to a young offender.

Access by a Parent

Each of these Acts has something to say about the rights of a parent or guardian to access a student's file.

Public Schools Act

A legal guardian can access a minor's file unless:

- ♦ Disclosure might cause an invasion of privacy of a third party;
- ♦ Disclosure could be detrimental to the education of the pupil;
- ♦ Disclosure could cause emotional or physical harm to someone;
- ♦ Disclosure could interfere with an enactment or investigation.

Freedom of Information and Protection of Privacy Act

A parent may have access to a minor's file if:

- ♦ It doesn't constitute an invasion of the minor's privacy (79-d).

Other exceptions include:

- ♦ Invasion of a third party's privacy (17);
- ♦ Disclosure may be harmful to individual or public safety (24);

- ♦ Disclosure may be harmful to law enforcement or legal proceedings (25).

Personal Health Information Act

A parent may request access if:

- ♦ The minor does not have the capacity to make health care decisions.

Exceptions include:

- ♦ Disclosure may endanger the mental or physical health or safety of a person;
- ♦ Disclosure may reveal information about another person who has not consented to disclosure;
- ♦ Disclosure could identify a third party who supplied information in confidence, under circumstances where confidence could be expected;
- ♦ The information was compiled for legal purposes.

Youth Criminal Justice Act

- ♦ The school is not allowed to provide access to a parent.
- ♦ The parent should be referred to the legal agency supervising the young offender.

Access by Divorced/Separated Parent

Two Acts provide guidance on this issue, and both seem to be in agreement.

Divorce Act – Canada

“Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information as to the health, education and welfare of the child.”

Family Maintenance Act – Manitoba

“Unless a court otherwise orders, the non-custodial parent retains the same right as the parent granted custody to receive school, medical, psychological, dental and other reports affecting the child.”

Third Party Requests for Information

Freedom of Information and Protection of Privacy Act

Sharing of personal information (excluding health or young offender’s information) is permitted if:

- ♦ Consent is given by the student/parent;
- ♦ The purpose of sharing is consistent with the purpose for which the information was collected;

- ♦ The sharing is authorized by another Act, e.g. Child & Family Services Act;
- ♦ The sharing is necessary to ensure health or safety;
- ♦ The sharing is for law enforcement/crime prevention;
- ♦ The sharing is with a correctional authority.

Personal Health Information Act

Personal health information may be shared with a third party if:

- ♦ The pupil or parent consents;
- ♦ It is shared with a health care provider, to the extent necessary to provide care;
- ♦ To protect the health or safety of the student or others;
- ♦ To contact a relative if the student is hurt or ill;
- ♦ If required by another Act.

Youth Criminal Justice Act

Information may only be disclosed to a third party:

- ♦ To ensure compliance with a court order, probation, or a supervision order;
- ♦ To ensure safety of staff, students and others connected with the school.

Transfer of the Pupil File

When transferring information from the Pupil File to another school, the following regulations and procedures should be taken into consideration:

- ♦ The Cumulative and Pupil Support files must be transferred;
- ♦ The Young Offender file never goes;
- ♦ Staff should review contents and remove irrelevant material before transfer;
- ♦ The Pupil Support File should go from professional to professional;
- ♦ You may obtain consent for the information transfer;
- ♦ If no consent is given, the file goes anyway. You may notify the family of the transfer of the file and the information included in it.

SUGGESTIONS FOR RECORD KEEPING

Some general suggestions (Acknowledgements: Dennis Lucas & Robert Solomon):

- ♦ Make your entries in chronological order;
- ♦ Record information while it is fresh in your mind;
- ♦ Alterations to records should be made with a straight line, a date and an initial;

- ♦ Stick to describing behaviours and be concise;
- ♦ Stay away from diagnosis and interpretation;
- ♦ Limit records to only directly relevant information;
- ♦ Include information about record keeping procedures in your informed consent form.

Ingredients of a Counselling Record should include:

- ♦ Name of client and date;
- ♦ Presenting issue for the client;
- ♦ Past history of the issue (if not described in earlier records);
- ♦ Current status of the issue / changes since last visit;
- ♦ Treatment / goals / homework / actions;
- ♦ Check back date and time;
- ♦ Referral information: to whom, what agency, when, what was their response;
- ♦ Administrative information: timetable, credits, etc.

Some things you can do to help protect Student and Counsellor:

- ♦ Talk to your Division/District Privacy and Access coordinator;
- ♦ Sensitize the coordinator to the counselling context;
- ♦ Ensure that there is a policy on record keeping / retention / disposal;
- ♦ Refer any requests for access to the Privacy & Access coordinator;
- ♦ Educate staff;
- ♦ Have a good “Informed Consent” form in place.

SUMMARY: IMPLICATIONS FOR PRACTICE

Dennis Lucas

1. Keep within the limits of your training and competence:
 - a) Have a clear sense of your role and purpose as a school counsellor;
 - b) Know when you will consult and refer.
2. Keep accurate and current records.
3. Inform students:
 - a) that records are being kept;
 - b) regarding limits to confidentiality;
 - c) regarding who may have access to the record and under what conditions.

Advise students that you are available to answer any questions they may have about the records kept.

4. Include information in the record that is complete enough to allow monitoring and evaluation of the services provided, but
5. Record only that information that is relevant and necessary to respond to the needs of the student with respect to his/her education. The record should be complete enough to show that "best professional practices have been fulfilled" (CCA).
6. Ensure that school division/district's policies are followed:
 - a) For safekeeping, security, and destruction of records;
 - b) For control of access to information;
 - c) For processes for transmitting or transferring records;
 - d) For seeking information from other sources;
 - e) For dealing with all matters related to third party information.
7. Any record made during the course of employment with a school division/district is in the custody or under the control of the school division/district. Working files are subject to the same access and privacy provisions as all other information about a specific student.
8. Remember: the school division/district has the right and obligation to refuse access to records under specific circumstances, e.g. if there is a threat to a person's health or safety, or unreasonable invasion of privacy.

Note: For more detailed information on these points consult:

MSCA Ethical Guidelines

Articles throughout this Resource Manual

Manitoba Pupil File Guidelines

Guidelines on the Retention and Disposition of School Division/District Records

SECTION E
GROUP COUNSELLING AND INTERNET
COUNSELLING

[Ethics and Group Counselling](#)

William Schultz

[School Counsellor Issues in Internet Counselling](#)

William Schultz

ETHICS AND GROUP COUNSELLING

William E. Schulz

INTRODUCTION

Situation One

During a group session with high school students, two participants tell the group leader (the school counsellor) that they smoke marijuana, but they have not tried cocaine or heroin. The participants insist that no one tell anyone, especially their parents, about their illegal use of drugs.

Situation Two

In a group for high school students dealing with self-esteem issues, one 14 year old member of the group comments that she is having sex regularly with her 23 year old boyfriend. She feels there is nothing wrong with this, since they plan to marry in a year and a half, when she turns 16. She believes her parents will agree to the marriage.

Situation Three

In a middle-years school, the counsellor brought together a group of students who had recently experienced loss of some type. The counsellor did not inform the members of the group of the type of exercises she would be using. She then used an exercise she would be using. She then used an exercise on death, and had each participant write their own epitaph. She was hardly prepared to deal with all the fear and pain that followed.

How can the Manitoba School Counsellors' Association (MSCA) Guidelines for Ethical Behaviour (1997), or the Canadian Counselling Association's Code of Ethics (1999) help counsellors deal with these, and many other, group counselling issues? Both of these codes of ethics are directed mainly to individual counselling, although the MSCA Guidelines do give this minimal suggestion:

"The School Counsellor shall make clear the purpose of group counselling and the techniques to be used in group sessions. The School Counsellor shall strive to protect members of the group from physical or psychological harm."

The CCA Code of Ethics is directed mainly to individual counselling, and include only the following general directive:

"Counsellors have the responsibility to screen prospective group members, especially when group goals focus on self-understanding and growth through self-disclosure. They take reasonable precautions to protect group members from physical and/or psychological harm resulting from interaction within the group, both during and following the group experience."
(page7)

As well the CCA Code of Ethics includes important principles/values that underscore the 70 articles in the code. The principles have been described by Schulz (2000) as:

- a) respect for the dignity of persons
- b) not willfully harming others
- c) integrity in relationships
- d) responsible caring
- e) responsibility to society
- f) respect for self-determination (page 7)

All of this information is helpful (including a decision-making model in the CCA Code), but more is needed. The remainder of this essay is an attempt to examine a number of ethical issues related to group counselling and to suggest a number of additional ethical guidelines or articles that could help school counsellors with group concerns and issues.

ETHICAL CONCERNS IN GROUP COUNSELLING

A number of authors (Jacobs, Harvill & Masson, 1998; Gladding, 2002; and Corey, 2002, 2004) have listed and commented on many major ethical issues in group work, including the following:

1. Group leader qualifications and values
2. Screening of group members
3. Confidentiality
4. Group member rights/informed consent
5. Group techniques
6. Personal relationships, and
7. Group termination and follow-up

1. Group Leader Qualifications and Values

There are a number of personal characteristics of group leaders that are very important, and without these characteristics, group leaders might have difficulty in relating to members of the group. George and Dustin (1989, p. 33) identified the following qualities: self-awareness, the ability to form warm relationships, genuineness, self-confidence, sensitivity and understanding, a sense of humour, flexibility and a willingness to self-evaluate.

Additionally, group leaders need group coursework and experience. It is unethical to practice group counselling without preparation and a sound knowledge of group process, group techniques, group dynamics and group development. The Association for Specialists in Group Work (1991, 1998) has published standards for counsellors working with groups. Corey (2002, 2004) summarized these standards into three areas of competencies:

A) Knowledge Competencies

- a) major theories of group counselling
- b) principles of group dynamics and group processes
- c) one's own values, strengths and weaknesses
- d) ethical and professional issues special to group work
- e) research in group work
- f) the helpful and non-helpful roles group members may take
- g) the advantages and disadvantages of group work
- h) the stages of group development

B) Skill Competencies

- a) screening and assessing clients for group work
- b) explaining purposes and procedures to group members
- c) diagnosing self-defeating behaviours in group members and intervening constructively
- d) modeling appropriate behaviour to group members
- e) interpreting non-verbal behaviour accurately
- f) using skills in a timely and effective way
- g) being able to make use of major techniques, strategies and procedures
- h) using homework
- i) being able to work effectively with a co-leader
- j) being able to terminate a group effectively
- k) using follow-up procedures to support group members
- l) using assessment procedures to evaluate the outcomes of a group

C) Group Work Practice

- a) critiquing group tapes
- b) observing group counselling sessions
- c) participating as a group member
- d) co-leading groups with supervision

- e) practicum experience: leading a group alone, followed by self-analysis and supervisor's feedback
- f) internship: practice as a group leader with on-the-job supervision

It is unethical to lead groups without appropriate training, and counsellors who do not have the training recommended by the Association of Specialists in Group Work can be found guilty of malpractice.

In addition, group leaders must be aware of their values and impact their values can have on group members. Group leader values should not be imposed on the group, but neither should group leaders hide their values. Ultimately, group members are given an opportunity to examine their values in a group.

2. Screening of Group Members

Screening group applications is necessary so that group leaders can ascertain whether or not a potential group member can both benefit and contribute to a group. It is unethical to put clients in a group just so that there will be enough members to have a group. Screening of group members should be done individually or in very small groups. During screening sessions, group leaders have the opportunity of establishing a relationship with perspective group members as well as informing the members of group purposes, norms and expectations. It is good ethical practice to have group member sign an informed consent statement at the end of the screening sessions and before the group begins. Informed consent is the acknowledgement on the part of the group member that he or she is aware of the purposes and major activities of the group and that he or she is participating voluntarily.

Note: Sample of "Informed Consent Statement" follows.

INFORMED CONSENT STATEMENT

I, _____, have met with the group leader and am aware of the purpose of the group and have learned about the usually strategies and techniques that will be part of this group experience. The importance of confidentiality have been discussed as well as the limitations on confidentiality. The leader has indicated limitations in her/his practice as well as the areas of expertise.

I am willing to participate with other group members to help reach personal and group goals. I am entering this group voluntarily and I will work hard with other group members and with the group leader.

Group Member Signature _____ Date _____

Group Leader Signature _____ Date _____

3. Confidentiality

The importance of confidentiality needs to be discussed with each member during the pre-group screening meetings and with the total group at the beginning of the first group meeting. In order for trust to develop in a group, group members must all feel that the personal thoughts and feelings expressed in a group will remain in the group.

It is unethical for the leader not to keep what is said in the group confidential. Yet, the leader should let group members know that there are some limits or exceptions to confidentiality; for example, when group members are of danger to themselves or others, when the course demand the release of records, or when the leader may have to consult with other professionals.

Group leaders should also point out to the group members that they can only guarantee their own confidentiality, but they cannot guarantee the confidentiality of group members. In order to keep confidentiality, leaders need to stress the importance of building trust in the group and to highlight how destructive breaking confidentiality can be to the total group process.

4. Group Members Rights

Group members have rights. Group members have the right to know the purpose of the group and the manner in which the leader will conduct the group. These and other matters are usually discussed during the screening sessions, including the signing of an informed consent statement.

Group members have other rights. They have the right to be treated respectfully by the leader and other members of the group. Members must be free from any type of coercion (physical or psychological) from group member and leaders. Attacks on group members are unethical.

Group members should feel free to leave the group if the group is not meeting their needs. If at all possible, the leader should have an individual interview with a group member who plans to leave the group.

5. Group Techniques

Group techniques can have a powerful influence on group members and leaders must fully understand the potential effects of techniques on members. This means having a theoretical rationale for using techniques. Any technique will do just fine, if leaders don't care where they are going with the group. Some leaders use techniques as a way to avoid conflicts or dealing with real issues. Techniques should never be used to "fill time" or serve as substitutes for real group exploration of member issues. A technique must never detract.

6. Personal Relationships

Depending on the type of group, the type of relationships between group leaders and members will vary. In a task group, contact between leaders and members is unavoidable and perhaps even helpful. In a therapeutic group, however, relationships are inappropriate and usually outside personal contact is seen as unethical.

“Group counsellors do not misuse their professional role and power as group leaders to advance personal or social contacts with members throughout the duration of the group.”
(*Association for Specialists in Group Work, 1989*)

Dual relationships occur when group leaders find themselves in two potentially conflicting roles with group members. In schools, many counsellors have both a teaching/supervising role as well as a counselling role and this dual relationship can negatively effect the success of group work experience.

7. Group Termination and Follow-up

“Follow-up meetings might be with individuals or groups, or both to determine the degree to which: (i) members have reached their goals, *(ii) the group had a positive or negative effect on the participants, (iii) members could profit from some type of referral, and (iv) as information for possible modification of future groups. If there is no follow-up meeting, provisions are made available for individual follow-up meetings t any member who needs or request such a contact.”

(*Association for Specialists in Group Work, 1989*)

The ethical issues surrounding termination and follow-up center around the fact that many group leaders neglect to plan adequate termination and follow-up. Gladding (1995) stated that if group leaders are negligent about this important procedure, group members may not adequately assess the impact of the group and are less likely to continue to work on goals they had set for themselves.

OTHER, LESS SERIOUS ETHICAL CONCERNS

It is important that school counsellors who have group sessions are aware of not only the important issues around malpractice, lack of training, breaches of confidentiality, personal relations and negligence, but also that they are aware of less serious issues that can occur. Frequently, these issues centre around group pressure, equal treatment, interpretations, and inappropriate self-disclosure.

Group Pressure

Kottler (2001, pp. 215-216) says that in spite of group counsellors telling group members that “no pressure will be put on you...”, immense pressure can often come from group members. Kottler describes this feeling as follows:

“I paid my dues. I spilled my guts and told you my secrets. You sat there and took it all in. You have me in a vulnerable position because you could use what you know against me in some way. Now it’s your turn. Now you have to pay your dues by working on your stuff, or at least telling us something really juicy ...” (p. 216)

When group members do not get involved in the group, subtle, and not so subtle, pressure is put on the quiet non-involved group member. Group leaders should protect the rights of each

member, allowing her or him the choice of involvement. In a technique called “Go Around”, everyone in the circle of group members gets a chance to respond to some question or issue. Just think of the pressure on the last person to say something, after every group member has spoken and all are now looking at this last person for her or his comments.

Equal Treatment

Group leaders, like everyone else, have biases, needs and preferences and they should not be too quick to pronounce to the group that everyone will be treated equally. Group leaders do pay more attention to more attractive clients, favour the members that smile at them, and prefer certain types of group concerns. Leaders are acting unethically when giving in totally to preferences. Leaders must be aware of their preferences and make every effort to guarantee equal status to all group members.

Interpretations

Group leaders at times make interpretations in order to show their interpretive powers to the group members or to check out the accuracy of their hunches. Interpretation is usually not helpful to the group member and frequently becomes an exercise in self-indulgence on the part of the leader.

Inappropriate Self-Disclosure

Kottler (1988, p. 243) stated the following about inappropriate self-disclosure:

“Each time a group leader engages in longwinded anecdotes that are not specifically intended to deliver an important message to help a group member work through the presenting concern, then the action is unethical because it negates the client’s importance and wastes time.”

Group leaders who get into the “I remember when I was in that situation ...” routine, keep the focus on themselves and this action can be both digressive and disrespectful.

Group leaders may be familiar with codes of ethical behaviour, and they may also possess good group leadership skills and attitudes, but they should also be aware that no codes cover all contingencies and they must, in the final analysis, take responsibility for their actions in the group.

ETHICAL GUIDELINES FOR GROUP WORKERS

To help counsellors and group work leaders counteract the aforementioned ethical concerns when doing group work, the following seven guidelines should serve as a minimal list that group leaders should be familiar with. This list is intended in addition to ethical guidelines such as the MSCA “Guidelines for Ethical Behaviour (1997)” and the Canadian Counselling Association’s “Code of Ethics” (1999).

Guideline 1: Group leader qualifications

Group leaders should have an informed consent form available to all group members beforehand. This form should contain information on the leader's qualifications, group experience, and group member and leader responsibilities.

Guideline 2: Screening of members

Group members should be screened so that their needs and goals are compatible with the goals of the group.

Guideline 3: Confidentiality

Group leaders stress the importance of confidentiality as well as the limits of confidentiality (danger to self or others; court orders; etc.). Group members are told of the difficulties in ensuring confidentiality in a group.

Guideline 4: Group member rights

Group members have the right to know group goals and the group techniques that are most frequently used. Members have the right to be treated equally, be protected from undue peer or leader pressure, and be free from intimidation and coercion.

Guideline 5: Group techniques

Group leaders do not use any techniques until they understand the theoretical rationale for the technique, and they are trained in its use or under supervision by a leader familiar with the technique.

Guideline 6: Personal relationships

Group leaders do not use their professional relationship for personal interest during or after the end of the group experience. As well, dual relationships with members should be avoided.

Guideline 7: Termination and follow-up

Group members are encouraged to evaluate their group experience and to become independent in a timely manner. All members are entitled to follow-up, through personal contact, telephone contact, or written contact.

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SCHOOL COUNSELLOR ISSUES IN INTERNET COUNSELLING

William E. Schulz

INTRODUCTION

The formal definition of Internet, Web, Online, Cyber or E- counselling given by the National Board for Certified Counsellors (NBCC) (1977, 2005) is as follows:

“Web Counseling is the practice of professional counseling and information delivery that occurs when client(s) and counselor are in separate or remote locations and utilize electronic means to communicate over the Internet” (p. 1).

Internet counselling sites fall into two broad categories: advice/information and counselling/therapy. In the first category, advice/information, specific information is given to a client on some clear, well-defined area usually by email. Web or Internet counselling/therapy is quite different in that the counsellor and client have an ongoing, personal relationship. Ainsworth (2000) has categorized five major ways of providing Internet counselling:

1. e-mail,
2. secure Web-based message system,
3. chat line,
4. video conferencing, and
5. voice over Internet phone

The most widely used is email and this is the area of focus for this paper. Email counselling may never replace fact-to-face counselling, but it can be effective. It is a viable alternative to traditional counselling when counselling is not readily accessible. Ainsworth (2000) pointed out that many people cannot, or will not, go for counselling for a variety of reasons:

- ♦ clients are too embarrassed to see a counsellor face-to-face,
- ♦ clients are living in a remote area far away from available counselling, and
- ♦ clients who have no flexible time, little money, or misconceptions about counselling.

Healing relationships have been formed through email contact, but there are still many counselling practitioners who question Online counselling relationships. Following are some advantages and limitations of Internet counselling, followed by some ethical considerations.

ADVANTAGES OF INTERNET COUNSELLING

1. Internet counselling makes counselling available to many people who might not otherwise receive counselling.

Example A

A young man who is very depressed about leaving school lives a long way from the nearest counsellor. He has a computer and an Internet connection and thus he can benefit from Web counselling because counselling is now available for him.

Example B

Some young women get pregnant and drop out of school. They are faced with many responsibilities as homemakers, along with a full-time job, caring for children, and, possibly, driving a long way to work. They can benefit from the flexible hours offered by online counselling.

2. Internet counselling gives clients a greater sense of being anonymous, a phenomenon not unlike a young child being very willing to talk through a puppet, but not face-to-face with a helper. Talking about topics such as sexual issues, gender questions and other sensitive issues can be much more difficult in person. Web counselling can lessen embarrassment or hesitation in going for counselling. Satisfied users of Internet counselling have made observations such as the following:

“I felt like I was the co-author of a self-help book – a book about me and topics that I was interested in ...”

“my experiences were like writing a journal, but were interactive...”

“this is a no-frills, guided, self-help educational process ...”

For some people, therefore, Web counselling provides them an opportunity to reveal much more, and more quickly than in traditional counselling.

3. The Internet offers counsellors a chance to offer additional services. Immediate test scoring and feedback is an advantage. As well, computers can create situations that provide for better tests than just paper/pencil tests. Counsellors can also make good use of portfolios; portfolios that allow them to look at students' writing samples, journals, reflections, projects and letters of reference.
4. Internet counselling can be a real advantage for students with disabilities. Voice recognition technology, touch screens and other technology can be very helpful, particularly for students who are housebound.
5. With the greater acceptance of an expert system, as frequently seen in solution-focused brief counselling, Internet counselling has a good basis for success. Clients increasingly want answers and the Internet counsellor is in a good position to prescribe solutions, and can take the time to come up with a well-thought through solution rather than needing to respond immediately. Clients are less interested in what caused their presenting problem than they are in trying out some counsellor-derived solution.

6. Some financial benefits have resulted from Internet counselling. Counsellors have started Online businesses that have resulted in not only more services for consumers, but also provided new jobs for counsellors.
7. The Internet allows for a large variety of support groups by overcoming political and geographical barriers. People get direct and supportive communication. For example, the group **alt.support.depression** is read by over 20,000 people (Oravec, J., 2000).

LIMITATIONS OF INTERNET COUNSELLING

Can Internet counselling really be counselling, or will it be little more than advice-giving, information and personal coaching? What are some of the limitations of Internet counselling that are frequently cited?

1. Major problems exist in terms of the quality of the Web counselling and the qualifications of persons delivering services on the Internet. At the present time there is not sufficient control over who is counselling on the Internet. Regulations and laws have not kept up with the rapid expansion of Internet counselling.
2. Many people do not realize that much of what goes over the Internet is not private and confidential. Lack of face-to-face communication can create a false sense of safety.
3. Young (1998) has pointed out that there are negative physical consequences of excessive Internet use. The Internet creates a high for the user, and can result in little sleep and less physical activity.
4. The Internet can be used by individuals to avoid socializing with others, and thus get in the way of helping in the very area (developing social skills) where the clients need help.
5. Sampson, Kolodinsky and Greeno (1997) pointed out that the benefits of easy access to career and other information can become a liability when users are overwhelmed with the vast amounts of information available.
6. Intensive forms of counselling are difficult for cyber-counsellors and should probably be done with face-to-face counselling. This raises the question of whether counsellors should diagnose Online.
7. The Internet environment allows for many virtual experiences and some Internet clients may blur the distinction between their own personality and their online personality (Young, 1997).

BUYER BEWARE

What are some of the questions potential users of Internet counselling should be asking?

1. Is the counsellor competent? Is the counsellor certified or licensed? Does the counsellor belong to a professional counselling association? Are links provided to websites of certification boards?

2. How secure are the emails? Can someone else use the counsellor's computer? Who else has access to the computer? How long will the emails be stored? Where? What encryption methods are being used to provide security?
3. What is the fee structure? Is there a monthly rate? Is there a maximum on the number of emails to the counsellor?
4. Is the client receiving counselling from the person who is described on the web site? How does the counsellor verify her/his identity (e.g., code words, numbers)?
5. With no visual cues, does the counsellor have knowledge of special circumstances or culture of the client?
6. Does the Web site deliver what it advertises to deliver?
7. What happens if the technology fails?
8. Does the Web counsellor provide the name of an "in person" counsellor available within the client's geographical region?
9. Does the Internet counsellor review relevant legal and ethical codes for Internet counselling? Is the counsellor linked to certification Websites?
10. How will the Web counsellor be able to discern when a client is a threat to self or others? What is the Internet counsellor's responsibility or obligation in this 'duty to warn' area?

INTERNET CONSIDERATIONS FOR A CODE OF ETHICS

A Code of Ethics is intended to be a guide to counsellors in their everyday conduct and in the resolution of any ethical dilemmas. The Manitoba School Counsellors' Association Guidelines for Ethical Behaviour (2003) deals with many ethical issues that counsellors face. Following is a summary of the 11 articles in the code, followed by some Internet considerations related to ethics.

Article 1. Primary Responsibility

The school counsellor's first responsibility is to act in the best interest of students.

For internet counsellors this means developing on-line counselling plans, outlining the limitations of Online counselling, discussing how to contact Web counsellors when they are off-line, coping with lack of visual cues, clarifying boundaries of competence, and determining when Online counselling is inappropriate and referral is required.

Article 2. Informed Student

The school counsellor shall inform students of the purposes, goals, techniques, and specific policies under which they may receive counselling, at or before the time when the counselling relationship is entered. Such information includes concerns about confidentiality, legal restraints on counsellors, and the possible necessity for consulting with other professionals.

Internet counsellors need to inform clients as to the exact nature of their services; namely, whether they are mainly delivering information about careers, whether they are mainly identifying career alternatives through Online searches, whether they are offering an interactive, on-line career counselling service, or whether they are offering databases for job openings. In addition, Internet counsellors need to assess the appropriateness of internet counselling, the limitations, the insurance coverage, provincial and national regulations, licensing and certification, encryption methods used, length and number of sessions, costs, confidentiality, record keeping and security, and client waiver agreements regarding the limitations of Internet counselling.

Article 3. Confidentiality

Confidentiality is the obligation not to disclose willingly information obtained during counselling. Confidentiality is crucial to establishing and maintaining a strong counsellor-student relationship. Therefore, the school counsellor shall attempt to obtain the consent of the student before divulging information received during counselling. Confidentiality is, nevertheless, not absolute.

Internet counsellors have the responsibility of informing clients of the difficulties around client confidentiality on the Internet. Websites must be secure, information between the counsellor and client should be encrypted, client and counsellor identity must be verified, client information must be recorded and stored in a secure place, possible electronic transfer of client information must be explained, as well as what clients need to do if computer technology fails.

Article 4. Record-Keeping

The school counsellor shall keep accurate and objective records of counselling sessions to facilitate the provision of services to students. Information received in the counselling process shall be kept as part of the counsellor's confidential records and not part of the records kept in the office of the school.

School counsellors use appropriate means of ensuring that records and other information received via the Internet are kept secure. Attention must be given by counsellors to saving email communication, to creating diskette back-up copies and hard copies, and to the length of time any records are kept. Confidential information on clients is transferred only when both parties have secure transfer and acceptance communication capabilities.

Article 5. Group Work

The school counsellor shall make clear the purpose of group counselling and the techniques to be used in group sessions. The school counsellor shall strive to protect members from possible physical or psychological harm.

Many Online support groups have been seen by group members as being helpful and supporting. Cyber-communities or chat rooms offer self-help and support by giving participants a chance to express concerns, offer support and advice and share information anonymously. Group members should be made aware of some real limitations of online group work. Anonymity and confidentiality can be breached. Among member communication without a leader can place vulnerable members at risk. Dealing with a crisis situation can be

very problematic. Online groups run the high risk of attracting hoaxes because of anonymity. Finally, online group members can readily “hide” emotionally, since non-verbal cues are not available.

Article 6. Impartiality

School counsellors shall be aware of their personal values, and shall strive to remain impartial in assisting students with decision-making and problem solving.

Several questions can be considered with this article: Do less educated and poorer clients have ready access to the Internet? Will the Internet make counselling more affordable and available to people? Will non-visual cues from clients help or hinder stereotyping and discrimination? The Internet gives counsellors access to other cultures and offers them exposure and experiences that allow them to examine the diversities and universalities among many cultures. The Internet is a rapidly changing resource, often not well censored or scrutinized. To show true impartiality, cyber-counsellors will need to have a well-defined framework with which to understand cultures and avoid discrimination.

Article 7. Referrals

School counsellors recognizing their boundaries of competence and provide only those services and use only those techniques for which they are qualified by training or experience. Counsellors shall make appropriate referrals when their professional assistance cannot adequately meet the students' needs. School counsellors must be knowledgeable about referral resources. Whenever possible and appropriate, school counsellors make referrals with the knowledge and consent of the client. At all times, counsellors shall act in the best interests of the students.

The Internet offers the cyber-counsellor the opportunity to deal with a wide range of problems and situations. Cyber-counsellors need to practice only in areas where they have expertise. They should be prepared to provide clients with the name of at least one other professional counsellor with expertise in the problem area. This counsellor would be available in the event the Web site is closed for a period of time, as well as a chance to meet face-to-face with a counsellor. Knowledge of reliable referral sources is of particular importance to employment and career counsellors since the amount of career information (both reliable and untested) is overwhelming for the less-informed client.

Article 8. Testing and Assessment

The school counsellor shall adhere to established standards regarding the selection, administration and interpretation of standardized tests and assessment techniques. The school counsellor shall consider socio-economic, cultural and ethnic factors in standardized tests. The school counsellor shall explain the nature, purposes and results of standardized tests in language that is understandable to the students, parents and other professionals. The school counsellor shall interpret test results with reference to other relevant information.

If online tests and inventories are used, school counsellors should make sure that the computer mode is the same as the print mode. As with regular testing assessment, counsellors need to pay

added attention to test security, test-taker identity, test validity and reliability, gender, racial and ethnic feature and the credibility of the test designers. As well, tests and inventories should be the types that are suitable for self-help, and that counselling help by email is available before and after the testing and assessment. If there is evidence that the client does not understand email results, the client should be referred to a qualified counsellor in her or his vicinity.

Article 9. Programs and Services

School counsellors share with other educators the responsibility for establishing and maintaining counselling and guidance programs which are responsive to the needs of the students and the community.

Information is exploding in the programs and services offered counsellors through the Internet. User-friendly programs are available for counsellors, students (clients) and parents in educational and career guidance. Career Explorer, Discover II, and CHOICES are a few of the programs that have been helpful, and email provides students with a way to get more information on educational programs and occupations. Providing access to all this available information is, however, a vital responsibility for counsellors. Not only must clients be helped in using Web data in a personally meaningful way, but counsellors need to ascertain which online materials will be helpful and meaningful to clients.

Article 10. Professional Standards

School counsellors shall strive to attain the standards of formal professional preparation that are recommended by the Manitoba School Counsellors' Association and the Manitoba Teachers' Society. School counsellors shall strive to maintain professional competence by taking advantage of professional development opportunities. School counsellors shall accept only those positions for which they are professionally qualified.

Professional associations are beginning to create standards, competencies and ethical guidelines for cyber-counsellors. The National Board for Certified Counselors, the American Counseling Association, and the National Career Development Association have guidelines on the use of the internet for counselling. A summary of their suggestions for professional standards would include:

- a) providing links to Websites of certification and licensure boards;
- b) knowing how to respond to the lack of visual cues;
- c) using multidisciplinary approaches with clients, including technology, university Web masters, libraries and other community resources;
- d) upgrading skills in program and Web designs; and e) developing online counselling skills.

For this last point, Bloom and Walz (2000) have suggested a number of steps to becoming an ethical Web counsellor:

1. Obtain a basic handbook on cyber-counselling.
2. Establish some goals and an operating philosophy.

3. Use the references, links and Websites in the handbook.
4. Experiment with Internet counselling by using it to augment regular counselling, such as following up clients, responding to their questions, and assigning Internet homework.
5. Develop a network of counsellors with similar interests and share ideas and experiences.
6. Be open to experimentation and change in your new role as cyber-counsellor.

Article 11. Professional Relationships

The school counsellor does not knowingly enter or continue a counselling relationship with a student who is receiving counselling from another professional person, without consultation with that other professional, except where the best interests of the student clearly demand such an extraordinary intervention. In relationships with employers, colleagues, and professional organizations, the school counsellor shall abide by the Code of Professional Practice of the Manitoba Teachers' Society.

This ethical guideline raises a number of concerns for counsellors. Will the Internet counsellor know if the client is having a counselling relationship in a traditional, face-to-face manner? Should Internet counsellors discontinue counselling if they know other helpers are involved? If the Internet "counselling" is more of an advice and information format, does it rate as receiving counselling? No clear guidelines exist to answer these questions, but, generally, if in-person counselling is readily available, the Internet counsellor should encourage the client to receive counselling "in person."

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SECTION F
PROFESSIONAL COMPETENCIES, STANDARDS
AND RELATIONSHIPS

<u>Greater Professionalism in Counselling</u>	William E. Schulz
<u>When Should School Counsellors Make Referrals?</u>	William E. Schulz
<u>Testing and Assessment</u>	Dennis Lucas
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GREATER PROFESSIONALISM IN COUNSELLING

William E. Schulz

INTRODUCTION

Counselling is a professional career and many attempts continue to be made by counsellors toward greater professionalism. Professions, modeled after law and medicine, can be described as having a “specialized knowledge base or shared technical culture; a strong service ethic with a commitment to meeting clients’ needs; and self-regulated collegial control rather than external bureaucratic control over recruitment and training, codes of ethics and standards of practice.” (Goodson & Hargreaves, 1996, p.5) Peterson and Nisenholz (1987, p.167) identify a number of basic features of a profession. How does the Canadian counselling profession measure up to the Peterson and Nisenholz characteristics?

1. A profession determines its own preparation and education/training standards. In the field of counselling in Canada, the Canadian Counselling Association (CCA) has prepared accreditation guidelines for colleges and universities offering counsellor education programs. These were approved by the CCA Board in May 2001. Curricular experiences that were outlined in the CCA Accreditation document include:
 - a) professional identity,
 - b) helping relationships,
 - c) group counselling,
 - d) human development,
 - e) social and cultural foundations,
 - f) career development,
 - g) appraisal, and
 - h) research methods and program evaluation.

Practicum requirements are seen as vital and include an initial 100 hour supervised practicum, followed by a final 400 hour supervised practicum, with a minimum of 200 hours being spent in direct client contact.

2. A profession is recognized legally via licensure and certification using criteria defined by members of the groups. Canadian Counsellor/Certification (CCC) and Quebec provincial licensure for counsellors are examples of certification standards undertaken toward this objective.
3. A unique role of the profession in general and for each specialty within the profession must be determined by the members of the group. The individual counsellor exercises

independent judgment, makes decisions and provides help. The CCA members have defined specific roles for divisions with CCA; such as the private practitioners' chapter, the feminist chapter, school counsellors' chapter, career development chapter and counsellor educators' chapter. As well there are a number of regional chapters including the Atlantic Chapter and B.C. Chapter. The Manitoba School Counsellors' Association (MSCA) has made role and function statements for its' membership since the 1960's and in 2002 adopted position papers for school counsellors' roles and functions.

4. A profession has its own professional ethics for its membership. CCA developed its first code of ethics soon after its formation in 1965. Since then the Code has been revised twice, in 1989 and in 1999. Casebooks (Schulz, 1994, 2000) were developed to clarify further the many articles in the Codes of Ethics. As well, Standards of Practice for each of the 70 articles in the CCA Code of Ethics were developed in 2001. MSCA's most recent revision of their ethical guidelines occurred in 2003.
5. A profession has procedures for disciplining those who behave unethically. In 1991, the CCA Procedures for Professing Complaints of Ethical Violations was adopted by CCA. Sanctions for ethical violations by CCA members include a formal reprimand with recommendations for corrective action; withdrawing membership for a specified period of time; placing the member on probation for a specified period of time, and expelling the member from CCA permanently. These procedures were amended in 2000.
6. Generally, a profession is considered a terminal occupation, where a practitioner may be gainfully employed throughout her or his career.

Besides these basic features of a profession, professional counsellors should have a professional attitude. What does having a professional attitude encompass? It means devoting time and energy into furthering the profession. That is, counsellors need to initiate and support moves towards licensing and/or certifying, as well as maintain close ties with agencies such as provincial departments of education and departments of health. A professional attitude means attending counselling conferences, workshops and in-services. It means keeping up with the latest in counselling by reading new books, journals and counselling newsletters. A professional attitude also means being active in professional organizations such as CCA and MSCA. CCA and MSCA have contributed a great deal to professional practice by providing guidelines for accreditation, certification, policy papers, continuing education units and ethical guidelines. In short, a professional attitude is making a commitment to continued personal and professional growth.

ENHANCING PROFESSIONALISM IN COUNSELLING

As indicated in the introduction, professional standards in counselling means having training standards, licensure, certification, self-definition, a code of ethics and procedures for disciplinary action. In the 1986 revision of the Professional Development Guidelines for School Counsellors, the American School Counselors' Association dealt with a number of principles

related to professionalism for counsellors. The following principles and subsequent questions have been adapted in part from these guidelines.

PROFESSIONAL EDUCATION

Counselling is a profession with educational standards and requiring advanced professional training. Much work on standards for professional training was done in the 1960's and '70's in the United States. In 1964 the "Standards for Counselor Education in the Preparation of Secondary School Counselors" were developed. In 1968 "Standards for Preparation of Elementary School Counselors" was established, and in 1969 the "Guidelines for Graduate Programs in the Preparation of School Personnel Workers in Higher Education" were developed. In 1973 these three "Standards" were combined into the "Standards for the Preparation of Counselors and Other Personnel Service Specialists." These standards established competencies for counselling students and spelled out objectives, program of studies and supervised experience, and the responsibilities of students. The National Standards for School Counseling Programs (ASCA, 1997) continue to be the framework for most American and Canadian guidance and counselling programs.

In Canada, CCA has developed certification regulations and in order for counsellors to be certified they must have a graduate degree and course work in:

1. Counselling Theory
2. Supervised Counselling Practicum and graduate course work in six of the following areas:
3. Communication and Relationship Skills
4. Group Counselling
5. Career Development
6. Assessment and Testing
7. Research and Evaluation
8. Consultation Methods
9. Learning and Human Development
10. Psychological Education
11. Counselling Intervention Strategies
12. Counselling Girls and Women
13. Multi-Cultural Counselling
14. Counselling in Specialized Settings (families, rehabilitation, schools, etc.)
15. Counselling Ethics.

MSCA has recommended to the Manitoba Teachers' Society (accepted by the Society) that minimal training for a counsellor should be a 30 credit hour training program for teachers with a B.Ed. Course work would consist of:

1. Counselling Theories..... (3)
2. Supervised Practicum (6)
(Counselling Skills and Field Placement)
3. Nine hours from the following:
 - a) Elementary and/or Secondary School Counselling (3) & (3)
 - b) Career Development Theories..... (3)
 - c) Career Information..... (3)
 - d) Groups in Guidance..... (3)
4. Twelve hours of electives from 3 above, or courses such as:
 - a) Psychology of Human Relationships (3)
 - b) Family Life Education..... (3)
 - c) Children's Play (3)
 - d) Observing Children (3)
 - e) Psychology of Exceptional Children (6)

CONTINUOUS PROFESSIONAL GROWTH

It is important that a counselling professional remains current in their field and strive for personal and professional growth. There are a number of ways in which counsellors can achieve professional growth. Counsellors should be members of local, provincial and national counselling organizations. Counsellors need to be actively involved in professional meetings, workshops, and in-services. They need to read the professional literature and continue to take course work in counselling. Professional growth can also be achieved through reading and/or writing counselling articles.

CONTINUING EDUCATION UNITS

CCA has established a system of Continuing Education Units (CEU) designed primarily to encourage counsellors to grow professionally. CEU is a method for documenting and providing recognition for professional development that occurs outside formal education organizations.

CODE OF ETHICS

Counsellors need to be familiar with the codes of ethics from their local, provincial and national organizations. Both MSCA and CCA have revised their ethical codes. The revised CCA Code of Ethics (1999) contains 70 articles under the following headings:

- a) Professional Responsibility
- b) Counselling Relationships
- c) Consulting and Private Practice
- d) Evaluation and Assessment
- e) Research and Publication
- f) Counsellor Education, Training and Supervision

Also included in this Code is an ethical decision-making model consisting of the following six steps:

- i) Identification of the key ethical issues,
- ii) Examination of the articles in the Code of Ethics,
- iii) Examination of the six ethical principles,
- iv) Generation of alternatives and evaluation of the strengths and weaknesses of each,
- v) Use of emotional decision-making techniques, and
- vi) Plan of action.

ACTING IN GOOD FAITH

Counsellors must handle all information received from clients in good faith, with discretion and in accordance with federal, provincial and local laws. Many counsellors in Canada are not licensed under law, but this does not mean that they should not know laws relating to children and youth, abuse laws or human rights laws. Counsellors must respect confidentiality, but at the same time be prepared to act for the client if there is danger to the client or others. Acting in good faith means being aware at all times that the first CCA and MSCA guideline for counsellors under counsellor/client relationship states:

“Member’s Primary Obligation is to respect the integrity and promote the welfare of counselees, whether counselees are assisted individually or in groups. In a group setting, the member-leader is also responsible for protecting the individuals from physical and/or psychological trauma resulting from interaction within the group.” (CCA Code of Ethics - B-1)

PROMOTING COUNSELLING SERVICES

The active promotion of counselling services and programs is closely related to the principle of professional growth. That is, counsellors need to be involved in professional meetings and in-

services, but even more, counsellors need to be involved in promoting counselling services. Reluctance to talk to counsellors about personal problems is still an issue for many people. Many people have no difficulty seeking help for a physical problem, but they are reluctant to seek help for emotional problems. To deal with this issue, the professional counsellor must promote counselling, through presentations and seminars for service groups, business groups and church groups; and through workshops to other professionals. In the final analysis, promoting counselling services means supporting and encouraging growth of the counselling field itself.

MEMBERS OF PROFESSIONAL ORGANIZATIONS

Counsellors should be active members of professional organizations. As members they can be instrumental in helping the counselling profession grow. Counsellors can help influence legislation that will benefit all counselees. CCA lists the following advantages to belonging to its professional counselling organization:

1. Receiving publications such as COGNICA and the Canadian Journal of Counselling.
2. Professional development through an annual conference, continuing education units and certification
3. Professional liability insurance.
4. Local chapters.
5. Discounts on books and tests.
6. Awards for outstanding contributions to counselling.
7. CCA position papers, ethical guidelines and case books.
8. Liaison with other counselling associations.

QUESTIONS RELATED TO THE PROFESSIONALIZATION OF COUNSELLING

These questions are intended as an informal method of periodic self-evaluation for counsellors. The questions may help indicate areas of strengths and weaknesses and may point to particular in-service professional development.

Professional Education Questions

1. Indicate your educational status
 - Bachelors degree
 - Counselling specialist diploma
 - Master's degree
 - Doctorate
 - Does Not Apply
 - Needs Change

2. Indicate your counselling certification

- None
- Working towards it

3. Indicate your counselling experience

- None
- 1-5 years
- More than five years

4. Indicate your professional academic training:

- Counselling Practicum
- Learning and Human Development
- Research
- Career Development
- Individual Counselling Techniques
- Measurement and Evaluation
- Consultation Methods
- Psychological Education
- Ethical and Professional Issues
- Interpersonal Relationships
- Others _____

5. Do you have the proper training to conduct group counselling?

- Yes
- No

6. Are you personally and academically competent to perform your present counselling role?

- Yes
- No

Summary

Areas that need change _____

Plans for implementing change _____

Continuous Growth Questions

1. Have you taken any postgraduate courses in counselling in the past year? Yes
 No
2. Have you attended seminars or workshops on counselling in the past year? Yes
 No
3. Have you read any books on counselling in the past year? Yes
 No
4. Have you served on professional counselling committees or subcommittees in your school division or province? Yes
 No
5. Have you attended a national counselling conference in the past three years? Yes
 No

Summary

Areas that need change _____

Plans for implementing change _____

Code of Ethics Questions

1. Are you familiar with codes of ethics such as CCA and MSCA? Yes
 No
2. Do you accept these codes as a guideline for your position as a counsellor? Yes
 No
3. When you see unprofessional or unethical practices with the profession, do you take action to eliminate these practices? Yes
 No
4. Do you refrain from allowing personal concerns to interfere with the counselling relationship? Yes
 No
5. Do you strive to keep matters between yourself and your client confidential? Yes
 No
6. Do you strive to keep accurate records of your counselling sessions? Yes
 No

7. Do you strive to work effectively with clients regardless of their socio-economic level, race, religion or sexual orientation, handling each one as a unique individual? Yes No

Summary

Areas that need change _____

Plans for implementing change _____

'Acting in Good Faith' Questions

1. Do you consider the welfare of your clients of primary importance? Yes No
2. Are you knowledgeable about federal, provincial and local laws regarding confidentiality and records? Yes No
3. Are you generally knowledgeable about laws regarding youth, danger to clients, libel and human rights? Yes No
4. Are you professional and honest in writing letters of reference and evaluation? Yes No
5. Do you exercise discretion and maintain good faith regarding entries made and records kept on clients? Yes No

Summary

Areas that need change _____

Plans for implementing change _____

Promoting Counselling Services Questions

- 1. Do you represent counselling by regularly attending professional meetings? Yes No
- 2. Do you regularly prepare articles for your agency or community, or other publications? Yes No
- 3. Do you assist in preparing reports or programs for local meetings, radio, TV, or other media? Yes No
- 4. Does your counselling program include periodic releases of information through various media? Yes No

Summary

Areas that need change _____

Plans for implementing change _____

Professional Organizations Questions

- 1. Do you work through your professional organizations to improve services provided by other agencies for the benefit of the clients? Yes No
- 2. Do you attempt to stay current with the changes in provincial and federal laws that may have an impact on your clients? Yes No
- 3. Does your professional organization have a legislative presence in your province and in Ottawa? Yes No

Summary

Areas that need change _____

Plans for implementing change _____

Conclusion

Professionalism in counselling is more than providing services based on training and expertise. Professionalism is the counsellors' inner motivation to represent the profession with a "do-good-at-all-times" attitude, as well as having pride in the profession of counselling and working hard to promote the further development of counselling.

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WHEN SHOULD SCHOOL COUNSELLORS MAKE REFERRALS?

William E. Schulz

A quick but partial answer to the question posed in the title of this article; namely, when should school counsellors make referrals, is presented in the ethical guideline itself:

"...school counsellors shall make appropriate referrals when their professional assistance cannot adequately meet students' needs..."

That is, if school counsellors believe, after careful consideration, that they are not helping clients, and that better progress could be made by another helper, school counsellors will inform clients of this conflict and make suitable referrals. Unfortunately, this guideline on making referrals raises as many questions as it answers:

1. How can counsellors be sure that they are not referring too soon?
2. How does a school counsellor know when to terminate counselling?
3. Should a school counsellor continue counselling a student who refuses a referral?
4. How can school counsellors determine if they are being of professional assistance?
5. How do school counsellors determine their "boundaries of competence"?
6. Is it better to offer "non-expert counselling" than no counselling at all, especially when a school counsellor is working in a remote area where referral services may be limited or non-existent?
7. Should counsellors keep counselling a student if parents request the counselling, even though the client does not appear to be benefiting from the counselling?
8. Should school counsellors counsel students, who are referred to them by teachers or administrators, but who do not want to receive counselling?

School counsellors practice only within their competence levels, based on their education, training, supervised practica and appropriate school counselling experience. Counsellors must constantly evaluate their abilities and levels of experience to deal with situations that clients bring to them.

When situations arise that are beyond the training or experience of school counsellors, it is unethical to proceed blindly into counselling. Consultation with other professionals about such situations is both ethical and recommended. Furthermore, school counsellors should consider even casual discussions with colleagues an important means to determine others' experience and expertise and then should not hesitate to tap into these resources whenever the need arises. This ethical guideline suggests that counsellors provide only those services for which they are qualified. A natural extension of this guideline is that counsellors maintain active enrolment in professional groups (determine areas of expertise among colleagues, and services available), and participate regularly in professional development activities.

School counsellors who work with groups must be very sensitive to group member needs and constantly assess whether group members are benefiting from the group experience, or whether a group member should be referred to individual counselling or to some other resource. Counsellors need to know the resources within the community and make appropriate referrals when warranted.

Sometimes moral and religious value differences between the student and the counsellor may require the counsellor to make a referral to another helper. If a counsellor has high discomfort with a student's values, or a counsellor fears that she or he might impose her or his values on the client and cannot remain objective, the client should be referred to another helper who can be more objective. Corey, Corey and Callanan (2003) clearly point out that counsellors must honestly assess whether their values are likely to interfere with the objectivity they need to be useful to clients. School counsellors need to take the time to explore their own feelings and values and must be honest to clients and refer when necessary.

Would you as a school counsellor refer a student in these situations?

- ♦ A student who wants help in putting Jesus Christ at the centre of her life.
- ♦ A student whose counselling goals you do not approve of.
- ♦ A student who is having unsafe sex and sees no problem with this behaviour.
- ♦ A gay or lesbian student who wants your help in "coming out."
- ♦ A student who continues to abuse drugs or alcohol.
- ♦ A student from another culture who has values very different from your own (Corey, Corey & Callanan, 2003, pp. 77-79).

School counsellors must always keep in mind that their primary obligation is to the student that they are counselling. Counsellors must maintain a relationship with the student only if it is beneficial to the student. Being accountable to the student, counsellors must at all times evaluate their own abilities as counsellors. When, and if, counsellors are in situations where they lack competence, they must recognize this and refer the student to a specialist or terminate the therapy

The following cases (Schulz, 2000) are intended to provide some further insight into the issues surrounding referral and counsellor competence. The first two cases illustrate questionable referral (or lack of referral) practices on the part of the school counsellor. The last two cases, show appropriate referral decisions.

Referral Refused (-)

After counselling a client for several months concerning issues of intense grief, loss, and abandonment, the school counsellor decides that she can be of little further help and recommends that the client receive intense grief therapy with a specialist in this area. After discussing this decision with her client, the client refuses the suggestion and states she views this as further

rejection and abandonment. She reproaches the counsellor for even suggesting a referral. The counsellor, not wishing to upset her client any further, forgets the referral and continues working with her client.

No Training in Marriage Counselling (-)

A school counsellor with eight-years experience decides to begin private counselling on a part-time basis. Her first clients are a couple who wish to receive marriage counselling. The counsellor happily accepts these clients for counselling even though she has had no training in marriage counselling.

Aggressive Student (+)

A school counsellor has had four sessions with a client. With each succeeding session the client becomes more aggressive, hostile and verbally abusive towards the counsellor. The counsellor decides to terminate the counselling relationship after the client refuses to cease the verbal abuse directed toward the counsellor. The counsellor suggests further expertise is required and offers to make a referral. The client agrees and the case is appropriately referred.

Referral Required (+)

A beginning counsellor is speaking with a student about the student's recently declining grades. In the course of the discussion, they get into reasons why the student's school work is down and in a moment of disclosure the student admits to abuse in the home. The counsellor immediately recognizes that this is beyond the scope of his abilities and he notifies the proper authorities and refers the student to qualified counselling facilities specifically geared for dealing with abuse cases such as this.

CONCLUSION

Applying the ethical guideline related to referral to practical situations is difficult because it involves values and the school counsellor's judgment. As educated professionals, school counsellors have the training to take responsibility for their judgments; judgments that always respect the fact that the counsellor's first responsibility is to act in the best interests of students.

REFERENCES

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TESTING AND ASSESSMENT

Dennis Lucas

BACKGROUND

The ethics of testing and assessment is not frequently raised in the discussions of counsellor ethics. Perhaps this is partly because the use of standardized paper-and-pencil testing instruments itself has not been a major activity for most school counsellors in Manitoba in recent years. In the 1970's and early 80's, there was more use of standardized tests, mostly in the area of interest and aptitude tests in career counselling. Interest inventories such as The Strong-Campbell Interest Inventory, the Kuder Preference Records*, the Differential Aptitude Tests*, the General Aptitude Test Battery, or John Holland's Self-Directed Search were used. In the area of personality assessment the Myers-Briggs has probably been one of the prominent instruments, although the extent of usage has not been great. While some counsellors may have had involvement with academic achievement tests and group intelligence tests, such involvement has been the exception rather than the rule. Counsellors' roles and required competencies have been more in the way of understanding the meaning and significance of test scores.

During the 1980's and early 90's, critics targeted the misuse the misinterpretation of test results. The whole notion of standardized testing came under attack on account of what many saw as flaws inherent in the tests. Accusations of sexist, cultural, and socio-economic bias in standardized tests were made. The trait-factor approach ("test-and-tell") became further discredited as people become more aware of the fallibility of standardized measurement and more disillusioned about the scientific accuracy or validity of tests. We became aware that self-estimates of interests and even of abilities were frequently as useful (and a lot cheaper and easier) for counselling purposes as opposed to published standardized tests. In Manitoba, even in the area of career counselling, the use of paper-and-pencil tests declined as computer-based programs like careercruising.com offered self-assessment of interests and aptitudes integrated into the career information program itself.

However, paradigms do change and we seem to be in a period when standardized assessment and evaluation has gained greater currently. Certainly in the areas of career counselling, the use of standardized instruments can offer clients a starting point for career and self-exploration. If counselling follows the special education 'bias' to more behaviourist approaches and quasi-objective observational reporting techniques, the "objective" inventory and measurement of individual characteristics may come more into play. We probably will also see greater availability and use of self-testing thanks to the computer and the Internet. It is therefore appropriate that MSCA deal with the use and misuse of standardized assessment as an area of ethical practice. Manitoba counsellors should have the ability to understand and discriminate ethical practice with respect to standardized tests.

MAIN ETHICAL RESPONSIBILITIES OF MEMBERS WITH RESPECT TO STANDARDIZED TESTING

MSCA's Guidelines for Ethical Behaviour contains one Article that directly refers to standardized tests and assessment. Article 8 concisely identifies four major ethical responsibilities:

"The school counsellor shall adhere to established standards regarding the selection, administration and interpretation of standardized tests and assessment techniques.

The school counsellor shall consider socio-economic, cultural and ethnic factors in standardized tests.

The school counsellor shall explain the nature, purposes and results of standardized tests in language that is understandable to the students, parents and other professionals.

The school counsellor shall interpret tests results with reference to other relevant information."

Other Articles are also pertinent to the counsellor's ethical responsibilities in the area of testing and assessment. Article 1 speaks to the primary responsibility to act in the best interests of students. Article 2 points out the responsibility to inform students regarding purposes, goals, techniques, and policies of counselling. Article 3 identifies the importance of the client's right to confidentiality. Article 4 refers to record keeping. Article 10 speaks to professional standards which require counsellors to strive to maintain professional competence.

GUIDELINES OF THE CANADIAN COUNSELLING ASSOCIATION

While MSCA's guidelines provide a good basis foundation for ethical behaviour with respect to testing and assessment, more detailed guidance may be found in the publications of the Canadian Counselling Association. The CCA's Casebook Abstracts* offers the following:

1. Counsellors adequately orient and inform clients so that evaluation and assessment results can be placed in proper perspective along with other relevant information.
2. Counsellors take responsibility to inform clients about the purpose of any evaluation and assessment instruments and procedures, and the meaning of evaluation and assessment results.
3. Counsellors recognize the limits of their competence and offer only those evaluation and assessment services for which they have appropriate preparation and which meet established professional standards.
4. Counsellors ensure that evaluation and assessment instruments and procedures are administered and supervised under established conditions consistent with professional

standards. They note any departures from standard conditions, and any unusual behaviour or irregularities which may affect the interpretation of results.

5. Counsellors recognize that their ethical responsibilities are not altered, or in any way diminished, by the use of technology for the administration of evaluation and assessment instruments. Counsellors retain their responsibility for the maintenance of the ethical principles of privacy, confidentiality, and responsibility for decisions regardless of the technology used.
6. Counsellors ensure that evaluation and assessment instruments and procedures are valid, reliable, and appropriate to both the client and the intended purposes.
7. Counsellors ensure that when reporting evaluation and assessment results to clients and other individuals, care is taken to provide, in an appropriate manner, accurate and sufficient information for an understanding of any conclusions and recommendations made, and to identify the basis for any reservations which might exist.
8. Counsellors ensure that evaluation and assessment data are released only to persons qualified to interpret and use them properly.
9. Counsellors who use psychological tests and other assessment instruments, the value of which depends on their novelty to the client, ensure that they are limited to and safeguarded which depends on their novelty to the client, ensure that they are limited to and safeguarded by, those with the professional interest and competence to do so.
10. Counsellors proceed with caution when judging and interpreting the performance of minority group members and any other persons not represented in the group on which the evaluation and assessment instruments and procedures were standardized. They recognize and take into account the potential effects of age, ethnicity, disability, culture, gender, religion, sexual orientation, and socio-economic status on both the administration of, and the interpretation of data from such instruments and procedures.
11. Counsellors ensure the integrity and security of evaluation and assessment instruments and procedures consistent with any legal and contractual obligations. They refrain from appropriating, reproducing, or modifying established evaluation and assessment instruments without the expressed permission and adequate recognition of the original author, publisher, and copyright holder.

COMPETENCE IN USING AND INTERPRETING TESTS AND ASSESSMENT TECHNIQUES: AN ETHICAL RESPONSIBILITY

Competence is an ethical requirement. Our professional associations direct us to see that it is an ethical responsibility for counsellors to recognize the limits of our competence and to use only those tests and assessment techniques for which we have been trained. That is, technical knowledge and skill are not simply questions of on-the-job “know-how”; they are an ethical imperative. To practice incompetently is ethically wrong. We must therefore ask, what knowledge and skills must a counsellor possess in order to be a competent (and hence, ethical)

user? A checklist of such competencies would include the following. The competent/ethical counsellor:

- ♦ is able to critically evaluate tests
- ♦ understands statistical concepts such as reliability, validity, error of measurement, percentile ranks, standard scores, normal distribution and what these concepts mean for test usage
- ♦ understands the significance of the norm group upon which the test was standardized, and can assess the appropriateness and significance of the norms for the client being tests
- ♦ understands the importance of supervised and standardized test administration and the significance of irregularities for test results, and adheres to standardized test administration procedures
- ♦ is able to score tests correctly and can interpret and communicate test results appropriately
- ♦ understands processes for test research and validation, and the guidelines for test development and use, and the implications for test usage and interpretation
- ♦ understands the limitations of tests in general, and the limitations of the particular test being used
- ♦ understands the implications of culture-boundedness for the validity of test results
- ♦ can assess the test's technical data to determine its validity
- ♦ understands the importance of test security and complies with security requirements
- ♦ understands and evaluates the consequences of assessment-based decisions for the client.

CONCLUSION

As professional school counsellors, we strive to treat clients with respect, with attention to their rights and welfare, and with competent professional assistance of the highest level. We believe that each person is entitled to respect as a unique human being, to self-direction, to privacy, and to high-quality service. Our usage of tests and assessments should demonstrate these values.

PROFESSIONAL STANDARDS

Carolynne Pitura

A school counsellor should be professionally qualified to carry out the complex and specialized functions involved in counselling. It is recommended that counsellors strive to attain the standards of formal professional preparation that is required to attain a prescribed level of professional knowledge and experience. Counsellors should strive to maintain their professional competence by taking advantage of ongoing professional development opportunities.

Counsellors should also be aware of their own competencies and training and only accept positions for which they are professionally qualified.

The following statements provide guidelines for counsellor professional standards:

1. Counsellors are expected to conduct themselves in such a manner as to bring credit to self and the profession.
2. Counsellors are expected to seek opportunities to continue their own professional growth and to work towards the improvement of their profession. Professional and personal growth is continuous and ongoing throughout the counsellor's career.
3. Counsellors expect ethical behaviour from their professional associates. Counsellors will attempt to rectify unethical behaviour on the part of their associates and will assist colleagues in observing ethical practices related to the work of the counsellor.
4. Counsellors are expected to be trained in cultural differences and must respect the ethical and moral values of families. They must be sensitive to the needs of students from a variety of cultural backgrounds.
5. Counsellors recognize that differences in clients relating to ages, gender, religion, sexual orientation, socio-economic and ethnic backgrounds may require specific training to ensure competent services.
6. Counsellors, as employees of a school or other institution, accept policies and principles of the institution as a condition of employment unless they conflict with professional standards and ethics.
7. Counsellors offer professional services only through the context of a professional relationship.
8. Counsellors conduct appropriate research and report findings in a manner consistent with acceptable educational and psychological research practices. When using client data for research, statistical or program planning purposes, the counsellor ensures protection of the identity of the individual(s).
9. Counsellors contribute to the development of the profession through the sharing of skills, ideas, and expertise with colleagues.

10. Counsellors are expected to adhere to the ethical standards of the profession, other official policy statements pertaining to counselling and relevant statutes established by local, provincial and federal laws.

DOCUMENTS REVIEWED

ACA Code of Ethics 2005

CCA Code of Ethics 2002

PROFESSIONAL RELATIONSHIPS

Carolynne Pitura

A counsellor shall inform students of the purposes, goals, techniques and specific policies under which they may receive counselling, at or before the time when the counselling relationship is entered. Such information includes concerns about confidentiality, legal restraints on the counsellors, and the possible necessity for consulting with other professionals.

In his/her relationships with students, employers, colleagues, and professional organizations, a counsellor should be aware of the following:

1. Counsellors are obliged to respect the integrity and promote the welfare of students with whom they are working.
2. Counsellors, when they feel that it would be in the best interest of the student to do so, will relate confidential information to parents, guardians, teachers, or school administration only with the knowledge and consent of the client.
3. Counsellors will establish and maintain professional relationships with staff and administration to facilitate the provision of optimal counselling services.
4. Counsellors will treat colleagues with professional respect, courtesy and fairness.
5. Counsellors will be aware of and optimally utilize related professions and organizations to which the counsellee may be referred.
6. Records of the counselling relationship, including interview notes, test date, correspondence, tape recordings and other documents retained by the counsellor, are to be considered professional information and may be used in counselling, research, and teaching, but always with the full protection of the client.
7. Counsellors take into account and show regard for the social codes and moral expectations of the community within which they work.
8. In group situations, particularly those oriented to self-understanding or growth, the counsellor is obligated to make clear to the group members the purposes, goals, techniques, rules of procedures, and limitations that may affect the continuance of the relationship.
9. In providing orientation to prospective group participants, especially when the emphasis is on self-understanding and growth through self disclosure, the counsellor is responsible for ensuring that that the purposes of the group situation are appropriate to the needs of the client.
10. Counsellors, when reporting research results and supporting data, will not reveal the identity of the persons used as subjects without their permission.
11. Counsellors shall carefully consider requests by prospective employers, private investigating agencies, or other persons, for confidential information about students. Such

information will only be provided upon written consent of the client or their parents (when the client is a minor).

12. Counsellors will not knowingly enter or continue a counselling relationship with a student who is receiving counselling from another professional person, without consultation with that professional, except where the best interests of the student clearly demand such intervention.

D O C U M E N T S R E V I E W E D

ACA Code of Ethics 2005

CCA Code of Ethics 2002

COMPREHENSIVE GUIDANCE AND COUNSELLING PROGRAM

Doug Muir

The Manitoba School Counsellors' Association's committee on Qualifications, Funding and Programming has developed a document entitled Guidelines for Comprehensive Guidance and Counselling in Manitoba. This document promotes the concept that guidance and counselling services and programs should be comprehensive and subject to systematic planning. The document should be used as a resource and reference guide which should replace the previous Manitoba document Guidelines for Guidance Services 1991.

The committee membership for the Guidelines for Comprehensive Guidance and Counselling in Manitoba included representatives from:

- Faculty of Education, University of Manitoba;
- Faculty of Education, Brandon University;
- School Counselling Group of Greater Winnipeg;
- Manitoba Education, Training and Youth;
- Practicing School Counsellors.

This has allowed for the various stakeholders to become familiar with the content and provide additional input. The Manitoba Department of Education, Training and Youth has a summary of the principles of a comprehensive guidance and counselling program on its web site and makes reference to the MSCA Guidelines for Comprehensive Guidance and Counselling document. The Manitoba School Counsellors' Association has the complete document on its website: <http://msca.mb.ca>

The Manitoba School Counsellors' Association believes that the efficacy of program delivery by trained and certified counsellors would be in the best interests of all Manitoba students. The Manitoba School Counsellors' Association also believes that funding for counselling programming from kindergarten to senior four should be a high priority investment for all Manitobans.

SECTION G

LEGAL ISSUES

Counsellors, Confidentiality,
and the Manitoba Pupil File Guidelines

Cameron Symons

Consent, Negligence and Confidentiality
in the School System

Norma Drosdowech

Youth Criminal Justice Act: Points to Ponder

Legal and Ethical Issues for School Counsellors

Stuart Whitley

COUNSELLORS, CONFIDENTIALITY, AND THE MANITOBA PUPIL FILE GUIDELINES

Cameron Symons

The therapeutic relationship is one that is characterized by trust, an element of which is confidentiality. Therefore, the protection of the complainant's reasonable expectation of privacy in her therapeutic records protects the therapeutic relationship. *R.V. Mills (1999) 3 S.C.R. 668 Supreme Court of Canada*

"Nothing personal Mr. Symons but I don't think anybody in this school is going to tell you anything after what happened to Jeff."

"What happened to Jeff?"

"He's telling everybody about how he'd been talking to you about his problems living with his dad after the divorce – about how his dad gets depressed and starts drinking. Now they're telling him he can't live with his Dad anymore. He never wanted that to happen.."

"Why does he have to do that?"

"Because his mother's lawyer got your records and they were able to make out Jeff's dad as an alcoholic and an unfit parent. Now Jeff has to live with his mother and that loser of a stepfather. Once this gets around, I don't think that anyone's even going to tell you their favorite colour much less what their problems are." (Muir, 2000).

The conversation above, based upon a scenario framed by Winnipeg counsellor Doug Muir illustrates the concern that the *Manitoba Pupil File Guidelines* may put school counsellors in a dilemma with regards to privacy and confidentiality. On the one hand, the expectation of privacy is a prerequisite to credibility and effectiveness in a counselling position. On the other hand, statements in the Guidelines that declare counselling records to be the property of the school division and open to access by students and parents, seem to threaten the counsellor's ability to ensure confidentiality. The question at issue is whether the Guidelines will allow a counsellor to remain true to the counselling code of ethics and guard the confidentiality of clients, while at the same time respecting the laws regarding access to information.

The question will be addressed by examining the *Manitoba Pupil File Guidelines*, and comparing the rules laid out there with the rules established in the counselling code of ethics and with the rules of the legal system within which counsellors work.

THE MANITOBA PUPIL FILE GUIDELINES

The *Manitoba Pupil File Guidelines* document (June, 2000) outlines the three types of information that may comprise a pupil file, specifically: cumulative academic information, pupil support

information, and youth criminal justice information. Each file of information merits its own level of security, with the Cumulative file being most accessible, to the Youth Criminal Justice file which is the most restricted. The Cumulative file may be kept in the office of the school. Pupil Support files may be kept in counsellors' or resource teachers' offices provided notice of their existence exists in the cumulative file. The Youth Criminal Justice file must be locked in a separate location, usually in the Principal's office.

One of the issues most relevant to confidentiality is the issue of access to pupil records. The Guidelines indicate that under The Public Schools Act, the parent of a student, or the student who has reached the age of majority, can request access to the student's file. This may give the initial impression that a parent may appear at the school office at any time and be able to demand full and immediate access to the contents of all student files. This would be a potentially threatening and damaging situation indeed. However, section 42.3 of The Public Schools Act provides schools with the right to refuse access if the "disclosure could reasonably be expected to:

- a) constitute an unreasonable invasion of the privacy of a third party;
- b) be detrimental to the education of the pupil;
- c) cause serious physical or emotional harm to the pupil or another person; or
- d) be injurious to the enforcement of an enactment or the conduct of an investigation under an enactment." (R.S.M. 1987, c. P250, 42.3(2))

It would appear then that under The Public Schools Act, the mother's lawyer in this scenario could be refused access to the file based on either a), b), or c) above.

Reflecting the terms of The Public Schools Act, the Guidelines themselves provide four grounds upon which refusal may be allowed, specifically:

1. the release would constitute an unreasonable invasion of the privacy of a third party;
2. if release would be detrimental to the education of the pupil;
3. if release would cause serious physical or emotional harm to the pupil or another person;
or
4. if release would be injurious to the enforcement or an enactment or the conduct of an investigation of an enactment.

In May, 2001, however, The Freedom of Information and Protection of Privacy Act came into effect and took precedence over other Manitoba statutes like the Public Schools Act with a few exceptions:

After May 2001, The Freedom of Information and Protection of Privacy Act will take precedence over all other Manitoba statutes or regulations in matters affecting access to records and protection of personal information, except for those statutes which "expressly provide" that they prevail over The Freedom of Information and Protection of Privacy Act.

Section 86.1 of The Child and Family Services Act is an example of a statute that expressly provides that it will prevail over The Freedom of Information and Protection of Privacy Act and reads as follows:

“If a provision of this Act is inconsistent or in conflict with a provision of The Freedom of Information and Protection of Privacy Act, the provision of this Act prevails.”

At the time of writing, The Public Schools Act does not have such a clause. Therefore, after May 2001, The Freedom of Information and Protection of Privacy Act will prevail unless changes are made to The Public Schools Act. School Boards will be advised of any such changes to The Public Schools Act. (Pupil File Guidelines, p. 15)

Fortunately, The Freedom of Information and Protection of Privacy Act will allow a similar level of protection for schools and their counsellors in this regard for it allows for refusal of access to information which would constitute an unreasonable invasion of the privacy of an individual who may be mentioned as a third party in the student’s record:

“The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s privacy.” (L.M. 1997, c 50, 17(1))

In determining what constitutes an unreasonable invasion of privacy, the head of a public body may consider whether the disclosure “may unfairly expose the third party to harm,” or whether “the personal information has been provided explicitly or implicitly in confidence” (17(3)e). In these terms then, it would appear that the school would be able to deny access to Jeff’s record either on the grounds that the information was provided in confidence, or on the grounds that it may invade the privacy of a third party, Jeff’s father.

A potential problem may arise however in the event that a lawyer hired by the mother is able to request the release of information using a subpoena or court order, for The Freedom of Information and Protection of Privacy Act 44(1)m states that a public body may disclose personal information:

For the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information or with a rule of court that relates to the production of information.

In the fact of a subpoena or court order, it would appear that the information could not be protected from release. This then is what creates concern from a counselling perspective. In Muir’s words this “could leave the counsellor in the position to judge whether to tell the student to stop talking immediately because what he is about to say could become available to others. Therefore, a counselling session is not devoted to helping the client work through issues, but rather insuring that the client does not say something that will then get them in trouble.” (Muir, 2000)

The challenge is to find a way to reconcile the student's need for privacy, the counsellor's need for assurances of confidentiality, and the need of the legal system for fair and equitable administration of justice. To meet the challenge it may be useful to examine the other documents that provide a context for the work of counsellors and search for solutions there.

THE C.C.A. CODE OF ETHICS

Relevant sections of the C.C.A. code include the following articles in the area of counselling relationships:

B2. Confidentiality

Counselling relationships and information resulting there from are kept confidential. However, there are the following exceptions to confidentiality:

- ♦ *when disclosure is required to prevent clear and imminent danger to the client or others;*
- ♦ *when legal requirements demand that confidential material be revealed; and*
- ♦ *when a child is in need of protection.*

B2. Duty to Warn

When counsellors become aware of their client's intent or potential to place others in clear or imminent danger, they use reasonable care to give threatened persons such warnings as are essential to avert foreseeable dangers.

Confidentiality is not without its exceptions in any therapeutic relationship and the C.C.A. code stipulates these exceptions clearly. Suicidal students or students intent on harming others are exceptions to the rule. A suicidal student would be considered a child in need of protection and the counsellor would be required by the Child and Family Services Act to report the child in need of protection either to a parent or an agency and ensure that professional care was provided immediately for the child. (*S.M. 1985-86, C80, -Cap. C80, 18.1*)

In the case of a student who may pose a threat to the health or safety of others, legal precedent has been established in this regard with the well known case of *Tarasoff v. Regents of the University of California (17 Cal. Rptr. 3rd (U.S. 1976))*. In this case a psychologist was told by a patient that he intended to kill his girlfriend. While the psychologist contacted campus police, he did not contact the girl herself or her family. The patient murdered his girlfriend and the family subsequently successfully sued the psychologist for failure to warn. The words of the judge were particularly eloquent on this issue: "The obligation of confidentiality ends where the issue of the public peril begins."

Legal proceedings may also overrule confidentiality, in that the concept of confidentiality is difference from that of "privilege." Under the law the only information that is privileged is information that is shared between lawyer and client. "Confidentiality" in terms of therapeutic relationships suggests that the therapist will not willingly disclose information to another

(Solomon, 1997), however the person may be forced to disclose information if subpoenaed to testify in a legal proceeding.

The third condition to confidentiality stipulated in B2 involves the assurance of protection of the child from abuse as required by the Child and Family Services Act. This is an act that takes precedence over both the Public Schools Act and the F.I.P.P.A. Act. The Act requires a counsellor who believes a child is in need of protection to report to any agency or to the child's parents or guardians, "even if the information was required in a professional relationship or in confidence, except in cases involving solicitor/client privilege" (18.2).

B4. Client's Rights and Informed Consent

When counselling is initiated, and throughout the counselling process as necessary, counsellors inform clients of the purposes, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed, and other such pertinent information. Counsellors make sure that clients understand the implications of diagnosis, fees and fee collection arrangements, record keeping, and limits to confidentiality. Clients have the right to participate in the ongoing counselling plans, to refuse any recommended services, and to be advised of the consequences of such refusal.

B5. Children and Persons with Diminished Capacity

Counsellors conduct the informed consent process with those legally appropriate to give consent when counselling, assessing, and having as research subjects' children and/or persons with diminished capacity. These clients also give consent to such services or involvement commensurate with their capacity to do so.

Schools are in a unique position as regards consent, for in schools no minimum age is specified for a student to give consent for counselling services. A student coming to a school counsellor's office may, by that action, be considered to be giving implied consent to services. Ethically, the counsellor should have informed all students in the school in advance about the nature of the counselling services offered and the limits to confidentiality in order to make this consent an "informed consent."

B6. Maintenance of Records

Counsellors maintain records in sufficient detail to track the sequence and nature of professional services rendered and consistent with any legal regulatory, agency, or institutional requirement. They secure the safety of such records and, create, maintain, transfer, and dispose of them in a manner compliant with the requirements of confidentiality and the other articles of this Code of Ethics.

B7. Access to Records

Counsellors understand that clients have a right to access to their counselling records, and that disclosure to others, information from these records, only occurs with the written consent of the client and/or when required by law.

In addition, under the heading of “Consulting and Private Practice”, the Code stipulates that “Counsellors limit any discussion of client information obtained from a consulting relationship to persons clearly involved with the case.” Any written and oral reports must restrict data to the purposes of the consultation and, every effort is made to protect client identity and to avoid undue invasion of privacy.

Robert Solomon (1997) advocates that counsellors maintain detailed records for legal as well as ethical reasons. Should a case go to court, the records of the counsellor will stand as evidence and can be the single most important factor in determining the outcome of litigation. The counsellor will be allowed to use records to refresh his/her memory of the interviews recorded, and the state of the record itself will be seen as a reflection of the counsellor’s general level of competence. A sloppy or careless effort at record keeping will suggest the same kind of approach to one’s clients and may bring a counsellor into greater likelihood of accusations of negligence.

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The sections of the Charter that are relevant to this topic are the following:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
8. Everyone has the right to be secure against unreasonable search and seizure.
11. Any person charged with an offence has the right
 - d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
15. I) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The Canadian Charter of Rights and Freedoms has impacts upon the issue of confidentiality that work both in the direction of *protection* of information and in the direction of *disclosure* of information. While the Charter contains a simple statement of the rights of citizens, the issues arising from these rights have been best illustrated in the courts. Recent cases considered by the Supreme Court of Canada have shown the nature of these competing interests and their disposition.

One of the most frequently cited cases is that of R. v. O’Connor, ((1995)4 S.C.R. 411). In this case the appellant, O’Connor, a Bishop in the Roman Catholic Church was charged with two counts of rape and two counts of indecent assault relating to his role as principal of a native residential school in the Williams Lake area during the time between 1964 and 1967. The four separate complainants in the case had all been students in the school at the time.

Seeking to test the complainant's credibility and corroborate the testimony, defence counsel obtained an order for the release of the therapeutic records of the complainants relating to sexual assault or sexual abuse. Delays and difficulties in the provision of these documents by the Crown to the defence caused the judge at the time to order a stay of proceedings. On appeal, the B.C. Court of Appeal found that the judge had erred by not examining whether the undisclosed records would be relevant to the case. If they had been, then the right of the accused to make a full answer and defence would be compromised and the rights of the accused under Section 7 of the Charter would have been violated. If not, then no violation would have occurred and it would have been appropriate to have continued with the trial. The Appeal Court suggested that the judge may have called for an adjournment to ascertain the relevance of the documents, provided those which were relevant, and then allowed the trial to continue. In its judgment, the Court of appeal recommended a two-step process for the production of records. In the first stage, the applicant would have to show that the information in the records was likely to be relevant to an issue in the case or to the competence of the witness to testify. In the second stage, the court would review the documents to determine which of them was material to the defence and allow the disclosure of those documents or excerpts.

Following the O'Connor decision, a consultation process ensued which resulted in the proclamation of Bill C-46 as an amendment to the Criminal Code in May of 1997. Bill C-46 specifies that in a sexual assault case, an accused who seeks production of a record must make application to a judge (Criminal Code of Canada 278.3.1). The application must identify the record, the person in possession of it, and the grounds upon which it is likely relevant (278.3.2). In response, the judge will hold an in-camera hearing to determine whether or not to order production of the record (278.4.1). Any person to whom this record relates may appear at the hearing and make a submission (278.4.2). The judge may then order the person in possession of the record to produce it or a part of it if it appears that the production of the record is necessary in the interests of justice (278.5.1). Having acquired the record, the judge will review it in private to determine which, if any parts of it are relevant, and should be given to the accused (278.6). Where the judge orders the production of the record or part of it, the judge may impose conditions on the production to protect the interests of justice, and privacy and equality interests of the person to whom the records relates.

Bill C-46 was tested on constitutional grounds in the case of R. v. Mills, ((1999) 3 S.C.R. 668). In this case the accused, Brian Mills was charged with sexual assault and unlawful sexual touching that were alleged to have occurred when the complainant, L.C. was 13 years of age. Defence counsel applied for disclosure of therapeutic records of L.C. from a counselling organization known as "Changes." The judge advised the parties that the production of records would have to be in accordance with Bill C46, which had just been proclaimed. In response, defence counsel raised a constitutional challenge on the grounds that C-46 ranked privacy rights above the rights of the accused to a fair trial and therefore violated his client's rights under Section 7 and 11(d) of the Charter.

At issue were the conflicting rights of accused and complainant. The denial of the accused's ability to defend himself would violate Section 7. On the other hand, an unreasonable search and seizure of record would violate the complainant's privacy rights in Section 8. Both of these rights are part of the "fundamental justice" principles ensured in Section 7.

The court upheld Bill C-46 and supported the idea of judicial discretion to balance the competing rights of accused and complainant within the larger context of society as a whole. The Court held that, where the rights of the accused to full answer and defence required the production of records, the order for production would not be an unreasonable search or seizure:

Given that s. 8 protects a person's privacy by prohibiting unreasonable searches or seizures, and given that s. 8 addresses a particular application of the principles of fundamental justice, we can infer that a reasonable search or seizure is consistent with the principles of fundamental justice. Moreover, ...the principles of fundamental justice include the right to make full answer and defence. Therefore, a reasonable search and seizure will be one that accommodates both the accused's ability to make full answer and defence and the complainant's privacy rights. R.V. Mills (88)

PROVINCIAL LEGISLATION

Recent legislation such as the F.I.P.P.A. and The Personal Health Information Act (P.H.I.A.) reflect the spirit and procedures of Bill C-46; in spirit, by attempting to limit access to private information only to the extent required to ensure justice, and; in procedure, by allowing for a review of the records an adjudication on their relevance. Moreover, these bills reflect the procedure outlined in C-46 that allows a judge to extract or sever information not strictly required for the service of justice. As you will see, these two acts, along with the Youth Criminal Justice Act are the ones that have the most to say to counsellors about confidentiality and their record keeping practices.

In Manitoba, access to pupil files and protection of pupil information is governed by six separate legislative acts, specifically:

- ♦ The Freedom of Information and Protection of Privacy Act,
- ♦ The Public Schools Act,
- ♦ The Education Administration Act,
- ♦ The Personal Health Information Act,
- ♦ The Child and Family Services Act,
- ♦ The Youth Criminal Justice Act, and

THE EDUCATION ADMINISTRATION ACT

The Education Administration Act simply requires that principals furnish transcripts to students at the end of each school year and upon individual requests, and that principals forward the pupil's cumulative folder to a new school after a student has enrolled there.

THE PUBLIC SCHOOLS ACT

The Public Schools Act offers significantly more detail on the subject of pupil records. It mandates that every school board shall have written procedures for collection, storage, retrieval and use of pupil information (42.1). Access to this information is allowed to any parent or pupil who has reached the age of majority, with the proviso that an employee of the school board who is competent to interpret the information must be available to assist the person viewing the information (42.3(1)). As mentioned earlier, access to this information may be denied under the following conditions:

- ♦ If disclosure could invade the privacy of a third party mentioned in the information;
- ♦ If disclosure could be detrimental to the education of the pupil or cause serious physical or emotional harm to the pupil or another person, or;
- ♦ If disclosure could interfere with enforcement of an enactment or with an investigation of an enactment (42.3(2)).

Further, parents of pupils who have reached the age of majority may not access the pupil's file without his or her consent (42.3(3)).

Those denied access have thirty days to appeal the decision, after which a court may order the school board to allow access to all or part of the file. The court is not, however, allowed to direct the school board to give access to any part of the file to which the denial of access provisions (42.3(2)) apply.

Article 42.6 allows for disclosure of information contained in a pupil file providing that "the disclosure is made in good faith and within the scope of the duties and responsibilities of the school board or the person."

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The Freedom of Information and Protection of Privacy Act has a significant influence on the actions of schools and school boards. The Act provides that an applicant has a right of access to any personal information in the custody or under the control of a public body (7(1))

The definition of personal information is important to the interpretation of the Act and it is subject to three requirements. First, it must be "recorded" information that may have been recorded using any kind of media. Oral comments however, if not recorded in some form, do not satisfy this requirement. The second requirement is that the information be about an individual as opposed to a corporation, group or organization. Finally, the third condition is that the individual is identifiable. Statistical or non-identifying information would not constitute personal information.

The school may refuse the right of access but must in turn specify the reasons for so doing. Alternatively, the school may provide the information but delete or "sever" any identifying information related to a third party. An example of this would be information reported about the applicant by a third party.

The Act specifies mandatory exceptions to disclosure of information much like the Public Schools Act. Section 17(1) states that “The head of a public body shall refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s privacy.” An example of this would be information revealing the identity of a party who had provided information in confidence for the purposes of law enforcement or the administration of an enactment. Other exceptions include those which might identify the third party’s employment, occupational or educational history; income, financial, or taxation information; personal recommendations, evaluations, or character references written by the third party; or any information which would indicate the third party’s race, religion, political affiliation, or sexual orientation. Perhaps most significant from a counselling point of view would be Section 17(3)e which allows the head of the public body to consider whether or not the information was provided either explicitly or implicitly in confidence. If it was, then the disclosure of that information could be deemed to constitute an unreasonable invasion of the privacy of a third party.

In the case of the introductory scenario, it would seem that the Freedom of Information and Protection of Privacy Act would allow for an outright refusal of access according to 17(3)e.

Another exception to disclosure relates to information provided by another government agency or public body (20(1)). This allows an agency to refuse to disclose information “if disclosure could reasonably be expected to reveal information provided, explicitly or implicitly, in confidence” by another government agency. Thus, it would appear that information in a pupil record that was provided by a police or social services agency might legally be excluded from disclosure.

Protection of individual or public safety offers another key exception to disclosure. Section 234 specifies that information about an applicant may be withheld “if disclosure could reasonably be expected to:

- a) threaten or harm the mental or physical health or the safety of another person;
- b) result in the opinion of a duly qualified physician, psychologist, or other appropriate expert, in serious harm to the applicant’s mental or physical health or safety; or
- c) threaten public safety.

A related article allows withholding of information that may in any way compromise a legal investigation or proceeding. Protection of property, and solicitor-client privilege provide other exceptions for disclosure. Agencies are also not required to disclose information such as letters of reference or performance evaluations provided to them by other agencies regarding the applicant’s suitability for employment.

Protection of privacy is the other dimension of the Act and it governs the types of information agencies may collect and the ways in which they may collect it. A school or other public body “shall collect only as much personal information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.”

The act directs that information about an individual must be provided by that individual directly, though a number of exceptions are allowed. Collection of information from other sources is allowed if:

- ♦ it is authorized by the individual or by government act;
- ♦ if collecting from the individual directly could cause harm to a person;
- ♦ if collection of information is in the interest of the individual and time or circumstances do not permit collection directly from the individual;
- ♦ if collection from the individual might result in incorrect information being gathered;
- ♦ if collection is for law enforcement or crime prevention purposes;
- ♦ if the information is collected to enforce family maintenance; or
- ♦ if the information is collected to inform the Public Trustee or Vulnerable Persons Commissioner about clients or potential clients (37(1)).

The body collecting information on an individual must inform the individual about the purpose for which the information is collected and the legal authority for the collection. The information collected must be accurate and complete and the individual has the right to request correction of information if it is incorrect. Further, the information must be stored in a safe and secure manner to avoid disclosure, unauthorized access, or destruction of the information.

In Division 3 of the Act, a number of rules are laid out respecting the use and disclosure of personal information. Within the Act the term “use” refers to accessing information within the organization while the term “disclosure” involves sharing information with an outside agency. The public body may use the information only for the purpose for which it was originally collected and shall limit its use in two ways. Information will be made available to only those of the public body’s employees or agents who need to know it to carry out their duties. Secondly, only the minimum amount of information necessary to accomplish that purpose will be accessed.

In terms of disclosure to external bodies, the information may only be disclosed for one of the following reasons:

- ♦ for a purpose consistent with that for which it was collected, as in the case of a student transferring from school to school;’
- ♦ with the consent of the person;
- ♦ to comply with legislation;
- ♦ to manage or administer personnel;
- ♦ to protect mental or physical health of an individual or group;
- ♦ to comply with a court order, warrant, or other legal proceeding; or
- ♦ for contacting the relative of an injured, ill, incapacitated, or deceased individual (44(1)).

Complaints about the use or misuse of personal information are to be investigated by the Provincial Ombudsman (49) and appeals of decisions are referred to the Court of Queen's Bench. There are however, some protections for persons employed by public bodies in that Article 84 states that no action may be brought against a person acting for a public body for "the disclosure of or failure to disclose, in good faith, all or part of a record or information under the Act" (84(a)). This sounds much like the "good Samaritan" principle of common law, which protects people who in good faith and within the limits of their skills try to assist someone in trouble. Penalties are in place however for those who wilfully:

- ♦ disclose information,
- ♦ destroy information to prevent it from being disclosed, or
- ♦ obstruct the work of the Ombudsman.

It would appear then to be within the boundaries of this act, once the Act applies to schools, for the counsellor in the above scenario to refuse access to the file on the grounds that it may cause damage to the person and would be an unreasonable invasion of privacy. A parent who disagrees with the refusal would then be required to apply to the Ombudsman, who hopefully could weigh the needs of the parties in a judicious way.

THE PERSONAL HEALTH INFORMATION ACT

The Personal Health Information Act (1997) mirrors many of the features of the Freedom of Information and Protection of Privacy Act. Individuals may request to see their personal information. Trustees must furnish either the information or a reason for not furnishing it. The reasons for non-disclosure are the same as those in the F.I.P.P.A. Individuals have the right to request corrections of erroneous information. Regulations regarding the amount of information collected, storage of information, restrictions on use and disclosure, complaint procedure, role of the Ombudsman, and types of offences are in agreement with the terms outlined in the F.I.P.P.A.

THE CHILD AND FAMILY SERVICES ACT

The Child and Family Services Act prevails in any conflict with the F.I.P.P.A. It requires reporting of any child thought to be in need of protection and provides protection for anyone acting as an informant regarding a child in need of protection (18.1). Under 76.3, records made under this act are confidential and may not be disclosed except in the conduct of agency business related to the client, or as required by the court. Under 76.5, an adult is entitled to access to his/her own record or the record of a child in his/her legal care. However, disclosure may be refused on grounds of potential physical or psychological harm, or to protect the identity of third parties. In the case of refusal, the applicant may be provided with an excerpted summary of the record (76.6).

It would appear that counsellors and their clients are protected under this legislation, in that the identification of an informant is specifically prohibited. Further, it provides the option of refusal or severance if there are concerns regarding harm to the child or protection of third parties.

THE YOUTH CRIMINAL JUSTICE ACT

The Youth Criminal Justice Act, 2002, c.1, Part 6, includes sections 110 – 157 pertaining to “Protection of Privacy of Young Persons.” The Act prohibits the publishing by any means of a report of an offence or alleged offence, or of any legal proceeding relating to an offence or an alleged offence by a young person. This protection of privacy extends also to young persons who may have been either victims or witnesses of the offence as well. However, one exception allows the disclosure of information to a school in order to ensure the safety of students and staff. Having received this information however, personnel in the school are prohibited from disclosing information to others except as necessary to accomplish the purposes mentioned above. The school is required to keep records of this information “separate from any other record of the young person to whom the information relates.” As well, it must be ensured that “no other person has access to this information, and that the information is destroyed when it is no longer required for the purpose for which it was disclosed. Contravention of any of these subsections is an indictable offence.

THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT

Many counsellors are concerned about how their work will be affected by this recently enacted federal legislation. They need not be, however, in that municipalities, universities, schools and hospitals are not covered by this Act. Those inquiring about this Act and its relationship to schools are referred to their provincial privacy legislation, which in Manitoba’s case, means the Freedom of Information and Protection of Privacy Act and the Personal Health Information Act.

As a matter of interest, however, it is reassuring to see that by following our own provincial legislation, we will also be able to satisfy the expectations of the federal law. The Act outlines ten principles to guide organizations, specifically:

1. That the organization will identify an individual or individuals who will be accountable for the organization’s compliance with the law;
2. That the organization will identify the purpose for collecting information at the time the information is collected;
3. That consent of the person or their guardian is required for collection or disclosure of information;
4. That only as much information as is required for the organization’s purposes will be collected;
5. That information will not be used or disclosed for purposes other than those for which it was collected;

6. That the accuracy of the information will be ensured;
7. That safeguards will be in place to protect the information;
8. That the organization will make available its policies on information management;
9. That individuals will be given access and the right to challenge their information, and;
10. That individuals may challenge the organization's compliance with these principles.

The website of the Office of the Privacy Commissioner also contains useful information on protection of personal information, and provides fact sheets including one which would be very relevant to counsellors on precautions to take when faxing personal information. The website can be accessed at http://privcom.gc.ca/information/02_06_01_e.asp.

REMEDIES

Remedies come in three forms for schools and school counsellors. The first is a preventative remedy involving care in record keeping. The second is the creation of a good informed consent form for counsellors. The third remedy is a clear policy and procedure for responding to requests for access to files.

Record Keeping

The counsellor may take precautions in advance in the area of record keeping in order to limit the vulnerability of clients.

In the area of record keeping, the common law tells that our records:

1. are the property of the employer;
2. may be subject to scrutiny, and;
3. will reflect upon the nature and quality of our professional practice (Solomon, 1997).

With these conditions in mind, counsellors may help themselves and their clients by keeping records that are organized, detailed, and, above all, objective. The following guidelines will help you protect your students:

- ♦ The interview record should have a date and time.
- ♦ The presenting issue should be identified.
- ♦ Key points on the discussion should be noted.
- ♦ The client's words should be used rather than the counsellor's. Instead of saying, "Uncle is abusing child" the record should say, "(Student) reports that uncle did (action) at (location) on (day) at (time).
- ♦ Diagnostic or judgmental statements should be avoided. Instead of saying, "Student is having a psychotic breakdown," the record should say, "(Student) reports hearing voices telling him/her...", or, "(Student) reports seeing (hallucination) in (location) at (days/times)."

- ♦ The notes should limit reference to only those issues specifically relevant to the case. Notes that include speculation or opinion may be damaging and are ill advised.
- ♦ If a consultation or referral is made, the record should indicate whom the counsellor contacted, and identify the agency, the date and time of the consultation, and the result or advice provided by the consulted source.
- ♦ The record should note the plan of action and any arrangements for future meetings or checks on the student.
- ♦ Any changes made to the record should have a simple straight line drawn through the deleted section(s) with the counsellor's initials and date beside each deletion.
- ♦ The records should be kept in a secure cabinet in the counselling office with access restricted to counselling staff.

Consent

In the area of informed consent it is important for counsellors to inform students and parents or guardians about the nature and conditions of counselling in advance. This type of notice may be included in the first school newsletter of the year. It could be discussed in a group session with all students new to the school as part of their orientation. It should be included in the school handbook. As outlined by Schulz & Kushnier (1988), the information should include:

- ♦ a description of the counselling process and objectives,
- ♦ a mention of the counsellor's qualifications and relevant background information,
- ♦ a description of students' rights in the counselling process, and
- ♦ who they may contact if they have questions or concerns.

Within this counselling information package, a note should be included about the school's policy and the law on confidentiality and its limits as in this example.

A note about confidentiality: My practice and policy on confidentiality is governed by a number of guidelines including The Canadian Counselling Association Code of Ethics, provincial and federal legislation, and the policies of this school division.

In all discussions between us you have a right to expect that anything we talk about will remain confidential. I will respect and guard your right to confidentiality very carefully, but you need to know that there are a few cases where information may be shared. These are those situations:

- ♦ *If you ask me to speak with someone else for you or give them information you wish them to have;*
- ♦ *If I feel the need to consult with another professional about how best to help you;*
- ♦ *If I feel that you or someone else may be in danger or in need of protection;*
- ♦ *If a court orders the release of information; and*
- ♦ *If required by law as in cases of child abuse.*

These situations are very rare, but it is important for you to know about them.

If you and/or your parent or guardian wish to have access to your records, you are invited to contact our privacy coordinator - _____ at _____.

Requests for Access

When we consider the scenario presented at the opening of this article, the potential problem is that in the absence of policy or procedure to the contrary, the parent or the parent's representative may arrive at the school door, request to see the information, be joined by someone capable of interpreting the information, find the incriminating evidence against the estranged spouse, and make use of the information in a way which may damage both the credibility of the counsellor and the well being of the student.

The solution to this potential problem is to have clear policies and procedures in place to deal with requests for access to information. Brian Hanson, representing Manitoba Education, Citizenship and Youth, suggests the following three measures:

- ♦ The first is that a Privacy and Access Policy be established within the school division. This policy should focus on management of student records with particular emphasis on privacy and access conditions and procedures.
- ♦ Second is the suggestion that the Privacy and Access Coordinators, who already are appointed in school divisions, be clearly identified as the first line point of referral on any requests for information. Communication between counsellors and the Privacy and Access Coordinators would be of extreme importance in order that they may be aware of, and sensitive to the counsellors' concerns about confidentiality.
- ♦ Finally, Hanson suggests that those people who are most likely to receive requests for information such as secretaries, principals, and related school staff receive ongoing professional development to increase their awareness and sensitivity regarding privacy and access issues. Manitoba Education Citizenship and Youth currently provides this type of training for any school divisions who request it.

Returning then to the scenario with which this article began: If these measures were in place, the sequence of events may flow in the following way:

- ♦ The parent may approach the school secretary, principal, or counsellor with the request for access to the records;
- ♦ Rather than responding directly, the staff member could refer the applicant to the Privacy and Access Coordinator;
- ♦ If the parent continued with the request for information to that stage, the Coordinator would then go to the counsellor and give the details about the request for access;
- ♦ This would give the counsellor the opportunity to register any concerns about the release of all or parts of the record;

- ♦ Armed with this information, and with the background knowledge of the legislation, the Coordinator would be able to decide with the counsellor whether to refuse access, or to sever any potentially harmful portions of the record;
- ♦ Should the parent appeal, the Ombudsman, and as a last resort, the Court of Appeal would have an opportunity to consider the relative needs of the applicant and the client in arriving at a ruling. As we have already seen, the client's privacy rights will be a factor in their decision.

With these strategies in place we may be better assured of protecting the privacy rights of all involved and protect both our students and ourselves.

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CONSENT, NEGLIGENCE AND CONFIDENTIALITY IN THE SCHOOL SYSTEM

Norma Drosdoweck

A presentation on Consent, Negligence and Confidentiality was made on June 2, 1997 by Robert Solomon, Faculty of Law, University of Western Ontario. The presentation was sponsored by the River East School Division No. 9 and the Counsellors' Association of River East. The following summary by Norma Drosdoweck, Ethics Committee, Manitoba School Counsellors' Association; Ad Hoc Committee on Confidentiality, Manitoba Teachers' Society contains information from a handout given to participants by Dr. Solomon.

In his presentation, Solomon spoke at length about issues of confidentiality in the school system with an emphasis on the necessity of effective record-keeping. Solomon stated strongly that there are no risks in having good records. Rather, he said, "records are your friends." There are however, great risks in having poor records, for failure to keep proper records is negligence.

Responding to participants' fears of being subpoenaed, Solomon indicated that teachers and counsellors can be subpoenaed whether they have records or not. Without accurate written records, the teacher or counsellor will be seen by the court as ineffective and incompetent. Conversely, well-organized, well-written, comprehensive notes indicate a caring, competent professional. In his handout, Solomon described:

THE IMPORTANCE OF PROPER RECORDS

The record of a practitioner is admissible in legal proceedings. It provides the basis upon which a court will reconstruct the facts of the case. The Supreme Court of Canada has held that a record made contemporaneously with the treatment will be considered to be prima facie proof of the factual statements made therein. This principle is limited to official records kept pursuant to a legal duty and to persons who had generally observed or had knowledge of the facts being records (*Ares v. Venner*, [1970] S.C.R. 608)

- ♦ A practitioner is allowed to use the record to refresh his or her memory in giving testimony. This will greatly increase the practitioner's credibility, because he or she may have seen hundreds or thousands of other clients after the particular incident giving rise to the case.
- ♦ A professional's credibility will be greatly influenced by the state of the record. If it is sloppy, incomplete and incoherent, it will suggest that the professional is careless, incompetent and unconcerned about the client's well-being.
- ♦ According to experienced counsel, a practitioner's records are the single most important factor in determining the outcome of any litigation. It serves as the basis of the trial preparation, the seeing of expert opinions and expert testimony. The record is critical in terms of what it says and what it fails to say.

- ♦ Penal Consequences: Both federal criminal law and a broad range of provincial laws create statutory obligations to make specified records.
- ♦ Professional Consequences: The failure to keep adequate records may be a specific ground for professional misconduct by the governing body that regulates your profession.
- ♦ Civil Liability: Inadequate record keep that contributes to injuring a client or patient may give rise to a civil suite in negligence.

Solomon stated that the courts distinguish between negligence for which you are liable, and errors of judgment for which you are not. Standards of care and the reasonableness of the decision are determining factors in the courts. Teachers/counsellors would not be held liable because they failed to help the student, but because their advice/actions were harmful to the student. The courts then do hold us responsible for our decisions since a professional knows or ought to know when a decision is inappropriate or endangers a client. And, the defense of “following regulations or policies” does not alleviate personal accountability.

Acknowledging educators’ fears of legal procedures, Solomon emphasizes that the courts do not expect perfection, everyone makes mistakes. The courts do expect the educator to act in good faith, to put the needs of students first and to act reasonably.

Solomon outlines the six distinct elements of a negligence action:

1. Duty of Care: The court must decide as a matter of law, whether the defendant is under any legal obligation to exercise care for the plaintiff’s interests in the type of case under consideration and determine the nature of the obligation.
2. The Standard of Care and Its Breach: Having defined the duty the court must establish the standard of care that is required by the defendant. Ordinarily, the defendant is expected to meet the standard of care that would be exercised by a reasonable person. However, those with special training or qualifications are expected to meet the standard of their professional colleagues.*
3. Causation: Even if the defendant is under a duty of care and breaches the required standard, he or she will not be held liable unless the negligent conduct is a cause of the plaintiff’s loss.
4. Remoteness of Damages: Once it has been established that the defendant negligently caused the plaintiff’s loss, the court must decide if the causal relationship between the defendant’s negligent act and the plaintiff’s loss is too tenuous or remote to warrant recovery. In negligence, liability is usually limited to foreseeable losses.
5. Actual Loss: The plaintiff must establish that he or she has suffered legally recognized damages as an element of the cause of action.
6. Prejudicial Conduct: Finally, the defendant may raise the plaintiff’s own conduct as a factor that should be taken into account to reduce or eliminate the plaintiff’s claim. The two most important defences are contributory negligence and voluntary assumption of risk.

With regard to the standard of care expected of trainees and volunteers, he stated:

1. These individuals are not held to the standard of care of fully qualified professionals but rather that of a reasonable trainee or volunteer. However, they will be expected to be competent for their position and have greater skills than lay people. They will also be expected to know their limits and when it is appropriate to refer the case to, or seek assistance from, more qualified staff.
2. Supervisors, managers and professional staff may be held liable in negligence for inadequately screening, placing, training, and supervising students, trainees and volunteers.

RULES FOR RECORD KEEPING

Solomon emphasized that public and private records must be compatible. Private records, however, can include preliminary conclusions and statements of opinion, not just factual information. Solomon outlined his rules for record-keeping.

1. All statements should objective, particularly those relating to drug and alcohol use, sexual activities, mental competency, or other sensitive matters.
2. Entries should be made in chronological order.
3. Subsequent alterations or additions should be made openly, with the original entry left intact and legible.
4. Any corrections should be initialed, signed and dated.
5. The author should sign the record and indicate his or her position.
6. The records should be made in dark ink and be legible.
7. Records should be complete, as any omissions will likely be interpreted negatively.
8. The author should limit the records to issues relevant to the client's treatment.
9. Items that are relevant should not be omitted simply because they are embarrassing or uncomplimentary.
10. Information should be recorded contemporaneously – when the event occurs or as soon as possible thereafter.
11. Entries should be made by the practitioner providing the service.
12. If an entry is made by a third party, it should be verified by the person who has performed the service.

In an additional note, Solomon indicated that “in the absence of a statute to the contrary, the record can be maintained in a written, computer or microfiche format provided it is dated, secure, permanent, and unalterable without detection. Written records are preferable.”

In response to the question of “Who owns a counselling record?” Solomon stated that the counsellor owns the records about treatment, but the child has access to ANY information available. In his legal opinion, the Charter of Rights of the individual would supersede the Public Schools Act in terms of access to records. Individuals have the right to control information about themselves and access to that information.

When participants then raised their concerns about the impact of sharing confidential information on the student, Solomon stated that the obligation of the teacher or counsellor is not to protect the student, but to keep accurate records and to be honest when sharing the information with the court.

Solomon pointed out that confidential information given in the school setting is not privileged information. Only lawyers are granted privilege and that is defined as “communication made with the scope of the solicitor/client relationship. The privilege does not apply to physical evidence, ongoing or future crimes, or to situations in which the lawyer is party to an offence. Lawyers are also required to report professional misconduct on the part of other lawyers to the Law Society.”

Privilege

Teachers/counsellors can request that information be privileged in a court hearing. Solomon indicated that the court would consider the following points:

1. The communication must originate in confidence.
2. Confidentiality must be essential to maintaining the relationship.
3. The relationship must be one that society values and wishes to foster.
4. The injury to the relationship must outweigh the benefit of having information available to resolve the litigation.

And as a final note in this section, Solomon points out that the consequences for refusing to testify or submit documents sought under search warrants can be contempt of court and obstructing an officer in execution of his or her duty.

In his closing remarks, Solomon advised educators to see confidentiality as a professional challenge, not a legal challenge. He noted that the law is supportive of educators.

“Be prudent and careful, but don’t panic!”

THE YOUTH CRIMINAL JUSTICE ACT: POINTS TO PONDER

The Youth Criminal Justice Act, Bill C-3, replaces the Young Offenders Act. The Youth Criminal Justice Act (YCJA) targets people 12 through 17 years of age, or a person 18 years or older who is charged with an offence under the YCJA committed while they were over 12 and under 18 years.

The Department of Justice states:

“The new *Youth Criminal Justice Act* will improve the youth justice system in four ways:

- ♦ It promotes accountability, responsibility and meaningful consequences for the full range of youth crime;
- ♦ It supports more constructive, long-term and sustainable solutions to youth crime that: reinforce important social values like respect, responsibility and accountability; focus on the individual needs of youth in ways that are also sensitive to culture and gender; make clearer distinctions between violent and non-violent crimes, so that young people who have committed a crime face consequences that reflect the seriousness of their offence; involve communities in identifying and finding innovative solutions to their unique youth crime problems; expand the role of victims; and support improved rehabilitation and reintegration measures;
- ♦ It is more consistent with national and international human rights in protecting the interests of children while, at the same time, protecting public safety; and
- ♦ It promotes a more flexible and streamlined youth justice system that is less time-consuming, more responsive to the needs of victims and families, and permits provinces to develop measures that meet their unique needs.”

(Department of Justice Canada. *Canada’s Youth Criminal Justice Act A New Law – A New Approach*, 2000.)

The following information comes from *The Need to Know* published by the Canadian School Boards Association, August 2000. In essence, much of the new YCJA echoes principles and sentiments expressed in the Young Offenders Act, regarding the law affecting school counsellors directly. Most of the information which follows relates to the sharing of information between Justice officials and schools.

1. Section 25 of the YCJA allows for an adult (considered suitable by a Justice, court, police or review board) to assist a young person, in the absence of a counsel or parent. Similar to the Young Offenders Act, a counsellor may advocate for an alleged or convicted young offender under these circumstances.
2. Section 39 of the YCJA states that if a pre-sentence report is requested after a youth is found guilty, a school may be asked for the offender’s school attendance and performance record, as well as the employment record of the young offender.

3. Under Section 119 of the YCJA, one may be given access to information in a “record relating to any offence alleged to have been committed by a young person” if he/she is a parent or any adult assisting in the care and supervision of the youth; for example, a counsellor or other school personnel.
4. In addition, Section 119 of the Act provides that information in a court record may be shared with a school or school boards to assist in the enforcing of a court order; for example, mandating regular school attendance.
5. A school or school board may apply to the court for access to a record if the youth justice court judge is satisfied that the applicant has a valid and substantial interest in the record; that access to the record is necessary to ensure compliance with probation or other orders, to ensure the safety of staff, students or others, or to facilitate the rehabilitation of the young person.
6. If allowed access to a record, Section 124 stipulates that a school must keep the information in the court record separate from any of the young person’s other records. The school must ensure that no one other than those authorized by the YCJA has access to the court record. Further, the school principal, counsellor, or division superintendent must “destroy his/her copy of the record as soon as the information is no longer required for the purpose for which it was disclosed or at the end of the access period, whichever comes first.” (P. 14, The Need to Know.) Presently, representatives from MAST, Corrections, Youth Justice and other involved parties are working on formulating the protocol for the sharing of information, to be in place when the YCJA comes into force.
7. Section 109 of the new Act provides that “no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a youth dealt with under this Act, as a victim of a young person or as a witness in the trial of a young person.” (P. 12, The Need to Know. This provision is unchanged from the Young Offenders Act. The YCJA does permit publication of information under these circumstances:
 - a) If an adult sentence is imposed; or if a youth sentence is imposed for an offence that carries the presumption of adult sentence, unless the judge decides publication is inappropriate.
 - b) Only after the young person has been found guilty.

Previously, the Young Offenders Act permitted publication of information only if a youth was transferred to adult court to be sentenced as an adult and publication was permitted before the youth was found guilty.
8. Justice personnel may request information from a school principal or counsellor. Counsellors should release information only when the justice system personnel specify exact information they require, and the purpose for which it will be used. Only information about a young person from other sources, i.e.: another justice system official,

this information should not be released. If necessary the counsellor should request more specificity.

9. Schools and school boards in Manitoba are expected to release information to justice system personnel on a case-by-case basis. Generally they are expected to acquire parental consent with respect to releasing information unless a court order or other extenuating circumstances exist.

(Canadian School Boards Association. *The Need to Know*, Ottawa, 2000.)

For useful sources of information, please refer to the Bibliography.

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Bill C-7 (full text of the *Youth Criminal Justice Act*)
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LEGAL AND ETHICAL ISSUES FOR SCHOOL COUNSELLORS

Stuart J. Whitley, Q.C.

“The history of childhood is a nightmare from which we have only recently begun to awaken.”

~ DeMause, 1974.

“...the family can be dangerous to a child, and the child has no escape from it. Legal emancipation for children so they can have independent recourse to outside help may be the only cure for an ancient pathology.”

~ E. Boulding, 1979, Children's Rights and the Wheel of Life.

INTRODUCTION

The single most profound event to occur on the Canadian legal landscape was the introduction of the Charter of Rights and Freedoms in 1982. It has moved the legal relationship of Canadians to their various levels of governments from a general welfare, paternalistic and crime-control-dominated approach to a legal model of society which is principally concerned with due process (which includes notion of fairness, notice, the right to be heard, openness, freedom from bias, and so on), individual rights, privacy and equality. These are all difficult conceptual issues, and they have significant consequences for the way in which counsellors in public schools do their work. (For purposes of this discussion, it is enough to say that the counselling relationship can arise between a student and any person in authority working in the school.)

The primary question to consider is to what degree does the reach of the Charter extend to children? The Constitution is clear: everyone is protected by its provisions: the equality provisions speak to every individual. These terms do not exclude children. A school being an institution of the province, is obliged to observe general Charter protections in the actions of its officials and the implementations of its policies. But do the same rules apply to students as restrict the actions of governments in relation to their citizens? The answer is, probably not.

In 1969, the United States Supreme Court⁽¹⁾ declared that children enjoy constitutional personhood. That is, constitutional protection continues to exist, even within the schoolyard gate. Given the explicit language in the Canadian Charter, the same result seems likely to occur here. Mr. Justice Stewart, writing a separate opinion, asked whether children should be given full equality: “Certainly not. They should not have equal liberty, they should have less. Neither should they have equal protection; they should have more.”

In other words, the rights of students should be approached presumptively from the perspective of full charter protection, but qualified by the idea that some issues inherent to children and their care and education require some limits that otherwise would not obtain for adults. These limits have to do with relative competencies of mature and socially aware children, and not with any arbitrary “age-defined” limited⁽²⁾, or, for that matter, intuitively based assumptions of education professionals.

This has important ramifications for the teacher/counsellor/administrator in the counselling setting, for no longer is the paternalistic view of children the appropriate means to accomplish results. It must be acknowledged, for example, that the Charter speaks to privacy interests: section 8⁽³⁾ has been held to include a “reasonable expectation of privacy”⁽⁴⁾ as has section 7⁽⁵⁾. Privacy becomes an issue for the counselling relationship, which must be included in any larger discussion of the counselling role.⁽⁶⁾

THE COUNSELLING ROLE

Aspirational guidance for professional counselling may usually be found, at levels below constitutional documents, in laws governing the activity. The Public Schools Act of Manitoba is silent on the subject of counselling. There are other federal and provincial laws dealing with children, the common law as well as international documents, to which one might refer during consideration of the proper approach to issues affecting children.

The Youth Criminal Justice Act, Family Maintenance Act⁽⁸⁾, Child and Family Services Act⁽⁹⁾, for example, in spite of their disparate focus, have a unifying theme which is reflected in the international common law: issues are invariably resolved by a resolution of the question of what is in the best interests of the child^(10, 11). The decision as to who makes this determination will always be situational, according to the circumstances of the moment. This could be a parent, teacher, counsellor, or administrator or a combination of these. Whether or not it is a collaborative decision will turn on a consideration of relevant laws and ethics, and in particular an examination of the role of the counsellor in the school setting.

A good working definition of the school counsellor’s role, culled from relevant professional literature, might be put this way: the counsellor’s role is to provide a safe setting to explore feelings, examine information, and consider options. It is necessary to articulate roles in any profession, for they act both as a shield and guide for professional activity. Like any theory of morality, a professional code (which may be as simple as a consensus-based definition) establishes principles about how people will treat one another. In the court setting, where decisions and actions are usually given the closest scrutiny, it seems essential that some thought has been given beforehand to the nature of the counselling function. Professional activity which adheres to some pre-defined conception of roles is more likely to pass the test of what is “reasonable” (the usual test for behaviour in litigation) than some intuitive or highly subjective testimony about what the nature of the counselling relationship was.

ETHICS AND LAW

Law prescribes the minimum levels of permissible conduct, by which everyone must abide. Ethics is that body of principles, in the professional setting, which people have agreed will govern their behaviour. It sets a much higher standard than legal obligations, and is general, ideal and aspirational. Law enjoys paramountcy over ethics; where the two conflict, law prevails.

The difference between law and ethics is best illustrated in the difference between “confidentiality” and privilege”, which both speak to non-disclosure. Confidentiality is governed, generally speaking, by ethical considerations; privilege by the law.

Privilege, in relation to legal matters, means that one may never be compelled to disclose what has been said to him or her. The other privilege granted in Canadian law is that which exists between a lawyer and client⁽¹²⁾. It is more than merely interesting to note that some 30 American states have granted formal privilege to school counsellors, in respect of communications made to them.

Confidentiality, on the other hand, is a state of voluntary non-disclosure. In other words, confidentiality is governed by ethical considerations, which requires that communications to a counsellor would not be divulged to anyone, save in certain exceptional circumstances, or where the law required it.

The circumstances which surround the counselling setting give rise to a reasonable expectation of privacy. It is a compelling argument that the Charter protects against an invasion of that privacy, where not authorized by law⁽¹³⁾. There is no law which would sanction the violation of such arrangements, subject to the single exception where a child is “in need of protection,” as set out below.

In ethics, of course, neither principles nor exceptions can claim a higher status, or greater legitimacy. Both are an expression of, and a reaction to, the perceived value of persons. A good exception to a good principle in no way threatens the value that the principle contains. The former moves beyond the principle to a truer realization of value; the “bad” exception is one which contradicts the rule. Confidentiality implies exclusivity, then, but obviously there are exceptions.

The first exception lies in the terms of the Child and Family Services Act⁽¹⁴⁾. Sections 17 and 18 of the Act require that, where there is “reasonable” belief that a child’s life, health, or emotional well-being is endangered, there is an obligation to report to a child protection agency, or to a parent. This positive duty in law over-rides the ethical duty of confidentiality, and there must be disclosure.

Second, disclosure may always take place with “consent” of the client. Confidentiality belongs to the client, not the counsellor.

Generally speaking, it is self-evident to say that confidentiality is essential to a counselling relationship. The literature suggests that most counsellors do not utilize ethical guidelines for the dissemination of confidential information to the parents. They tend to rely on general perceptions of the harmful effects that release of information will have. Counsellors who perceive no harmful effect tend to give out information, even if the child has requested that they not do so. Allegiances to parents tend to be greater where the child is younger⁽¹⁵⁾. Given the enormous number of child abuse cases which have come to the attention of officials⁽¹⁶⁾, the counsellor may be betraying the client’s confidences with potentially fatal consequences. In

other words, there is no certain way to determine, at least in initial interviews, the causes of anxiety or dysfunction⁽¹⁷⁾, given that abuse manifests often obliquely in the victim.

Third, there is an ethical obligation to breach the confidence, if the child is a danger to third parties⁽¹⁸⁾.

Beyond these exceptions, there is no requirement that a counsellor breach the confidences shared with him or her. The premise for the counselling relationship is confidentiality, for the child is attempting to develop problem-solving devices. To breach these sorts of confidences beyond the legal and ethical exceptions set out would impair or discourage these steps to greater self-reliance, personal control and problem resolution. Moreover, there is a compelling community interest in fostering the child counsellor relationship, even if it were not for the slowly emerging notion of child as something more than simple extension of parent⁽¹⁹⁾.

Conclusion

These sorts of issues arise during the context of specific problems⁽²⁰⁾. When a child comes in to speak to the counsellor regarding birth control advice or abortion, for example, it has the potential to become an emotionally charged issue for others, including parents which may exacerbate the problem for the person being counselled. Paramount are two guidelines. First, there is no absolute right of the parent to know (it may even be that the parent is the cause of the pregnancy⁽²¹⁾). Second, the counsellor has a duty to act reasonably in the circumstances.

There are many things which constitute reasonable conduct. These include, in the example under discussion, the recognition of ethical limits. That is, does the counsellor hold a pre-determined stance which would preclude the objective performance of the counselling role? There should be assessments of maturity, assurances of medical involvement, where that is appropriate. Professional referrals or consultations may be in order.

The child should, in the ordinary course, be consulted regarding further professional consultations. His or her consent is desirable, but not necessary; but as a rule, the child should be kept informed. This goes to trust and the fostering of the relationship. From a forensic perspective, these are reasonable and ethical things to do. Notes should be kept of discussions and consultations, which should be retained as the counsellor's property⁽²²⁾.

As has been observed elsewhere, "centuries of treating children as objects, a routine implanted in each generation by its parents, will be hard to break"⁽²³⁾. There is an international move towards the emancipation of children; in Canada, it will be fuelled by the Charter, which will inevitably demand consideration of their needs as persons in their own right, and balanced with a view to their best interests. The law is largely untested, but the experience elsewhere is encouraging. What we know of family violence and child abuse is emerging as a horrific problem, and we can no longer be confident that the family or family involvement is the safest option for the child. In consequence, the role of the school counsellor is certain to become increasingly critical; inevitably, it will be subjected to the scrutiny of the courts. Counsellors must be ready.

Stuart Whitley was an Assistant Deputy Attorney General, Province of Manitoba. The author's views are his own and do not necessarily reflect the position of the government or any other agency.

REFERENCES

- (1) Tinker v. Des Moines (1969) S.Ct. 733
- (2) See the discussion in "*Freedom and Rights in Schools: Towards Just Entitlements for the Young*", R.F. Magsino (1979), 29 Ed. Theory 171. It must be remembered that the construction of the Charter, in section 1, provides for the reasonable limitation of freedoms "prescribed by law as can be demonstrably justified in a free and democratic society." In *Oakes v. The Queen* (1986) 1 S.C.R. 103, the Supreme Court of Canada held that limitations must not be arbitrary; they must be rationally linked to the law's objective; there must be minimal impairment of the right, and limits must be proportional, that is, the effects of limiting freedoms must be excessive.
- (3) The right to be free from unreasonable search and seizure.
- (4) *Hunter v. Southam* (1984) 11 D.L.R. (4th) 641 (S.C.C.). There was some discussion of the right to privacy in *R. v. Morgentaler*, (1988) 1 S.C.R. 30 at p.55.
- (5) The right to life, liberty and security of the person...
- (6) The international community recognizes the privacy interests of the child. See, for example, *The United Nations Convention on the Rights of the Child*, adopted by the General Assembly on November 20, 1989, provides in Article 16: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy."
- (7) R.S.C. 1985, c. Y-1, and amendments.
- (8) R.S.M. 1987, c F20.
- (9) S.M. 1985-86, c. 08 – Cap C80.
- (10) For example, in the Declaration of the Rights of the Child, United Nations General Assembly Resolution 1386 (XIV), November 20, 1959, Principle 2 provides that: "In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration (emphasis added)."
- (11) See for example: Walleat, P.L. *Abortion Counselling and the School Counsellor* (1974), 21 Sch. Coun. 188, at p. 195; Talbutt, L.C. *The Medical Rights of Minors, etc.* (1980) 22 Sch. Coun. 403; Talbutt, L.C. *Current Legal Trends Regarding Abortions for Minors: A Dilemma for Counsellors, Ethical and Legal Issues in Counselling* (1988), W.C. Husy & T.P. Remley, eds. At pp. 137-142. Eberlein, L., *Counsellors Beware: Clients Have Rights* (1977), 56 *Personnel & Guide*. J. 219; Erikson, E.H., *Childhood and Society* (2nd Ed.) (1963).
- (12) There is privilege against self-incrimination; the right not be compelled to testify in a criminal trial. There is also a privilege granted to juries, regarding their deliberations. Here, third party communications are being considered.

- (13) Under section 8, if not section 7, as earlier discussed.
- (14) C.C.S.M. Cap. C80.
- (15) See J.C. Zingaro, *Confidentiality: To Tell or Not to Tell*, op. cit., n. 11
- (16) See example *Sexual Offences Against Children* (Badgley Report, 1984), Vol. I and II. One-third of males, and over half of females surveyed had been victimized sexually. Also: *Reaching for Solutions* (Rix Rogers Report) (1990) at p. 17. In Manitoba, last year there were more than 2,400 cases reported; it is estimated that unreported cases, including emotional abuse, conservatively multiply this figure by 3.
- (17) This becomes critical when a parent demands to know if a child is being counselled, and if so, what is being said. Is the parent curious? Is the parent desirous of having a better understanding of the child, or is the parent merely protecting selfish interests? There is no way for the counsellor to know. In *Weiss v. Weiss* (1981) 52 N.Y. 170, it is observed: "Where the physical and emotional well-being of a child is involved, it is at best anomalous that its protection should be dependent on the vindication of the "rights" or parents."
- (18) See Zingaro, op. cit.
- (19) This is not to say that parents should not be involved; such participation should be actively encouraged as a reasonable step for a counsellor to take.
- (20) It is far better, of course, for professional associations to address issues beforehand, in order to guide action. If ethical obligations clash with policy directives, such conflicts must be addressed in advance of the child becoming the vehicle for its resolution.
- (21) Reporting of child in need of protection may be to a child protection agency or to a parent. Who is notified is a judgment based on the circumstances of each case.
- (22) Note that s.41(1) of The Public Schools Act was amended in 1990, to allow parents to have access to "any file or record kept at the office of the school or school board respecting the pupil."
- (23) E. Boulding, *Children's Rights and the Wheel of Life* (1979) at p. 71.

SECTION H

APPENDICES

[Canadian Medical Association article on PIPEDA](#)

[Samples of Information on Student Services](#)

[Websites of Interest](#)

CANADIAN MEDICAL ASSOCIATION ARTICLE ON PIPEDA

The following article for Medical Professionals is of special interest due to the many similarities with issues facing school counsellors regarding confidentiality, consent and record keeping.

HOW WILL YOU BE IMPACTED BY THE PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT? (CANADIAN MEDICAL ASSOCIATION)

The federal Personal Information Protection and Electronic Documents Act (PIPEDA) came into force on January 1, 2004. This Act governs the collection, use and disclosure of various types of personal information.

The MMA has been working in collaboration with the Canadian Medical Association to clarify physician's legal obligations under PIPEDA with respect to the collection, use and disclosure of patient information.

The Privacy Commissioner of Canada has confirmed that:

- ♦ Patient information that is collected, used and disclosed by physicians is subject to the PIPEDA legislation.
- ♦ Overall, the enactment of PIPEDA will not change significantly the doctor-patient relationship.
- ♦ Pursuant to PIPEDA, a person's consent is required with respect to the collection, use and disclosure of personal information.

In the case of patient information collected, used and disclosed by physicians, a patient's implied consent is sufficient if that implied consent is based on a **general understanding** of how personal information will be used and disclosed by the physician for those uses and/or disclosures that a patient would reasonably expect.

This **implied consent** is acceptable within the "circle of care", i.e. for uses and disclosures required to provide care and treatment. This would include, for example, disclosures to and from a GP and a specialist, a GP or specialist and a laboratory, a physician and a pharmacist, etc.

More explicit patient consent would be necessary for uses and disclosures that a patient would not reasonably expect, such as the disclosure of information for research purposes.

This "general understanding" upon which implied consent must be based can be achieved through notices, posters, brochures and information on the forms that patients typically fill out when providing a medical history.

For several years, under provincial legislation that predates PIPEDA, physicians have been obligated to have in place a written **office privacy policy**. A privacy policy should take into account such matters as how staff are trained in privacy awareness and practices, how records

are retained and disposed of, the process by which patients can gain access to their record, how patient complaints regarding access or handling of their health information will be dealt with, and office communications (i.e. how is patient information protected when you and/or your staff communicate with patients and others via telephone, fax, e-mail, or post/courier?)

The following is a synopsis of some of the key considerations you should take into account in developing your office's privacy policy, as set out in the CMA's Privacy in Practice handbook:

Physician Accountability

- ♦ The physician has ultimate responsibility for his/her patient records.
- ♦ Office employees should be aware of and adhere to privacy policies.
- ♦ Records must accurately document a patient visit.
- ♦ Clear rules must exist for the retention and disposal of records.

Patient Rights

- ♦ Patients own the information in their record, but the physician owns the actual record.
- ♦ Patients have the right to timely access to their record.
- ♦ In extremely limited circumstances, patients may be denied the right of access to their record if this poses a serious risk to themselves or others.
- ♦ Patients can get a copy of their record at a reasonable cost.
- ♦ Patients can request changes in their own record and this request should be documented by an annotation in the record.
- ♦ A standardized process should exist for dealing with patient complaints.

Consent

- ♦ Only information needed for the care and treatment of the patient should be collected.
- ♦ Patients need to know how their physician will use their health information.
- ♦ Consent is implied for the collection, use and disclosure of information needed for care and treatment.
- ♦ No consent is needed to disclose patient information when the disclosure is mandated by legislation.
- ♦ Consent is required to share information with third parties for reasons other than care and treatment.
- ♦ Patient consent can be withdrawn at any time.
- ♦ The consequences of denying or withdrawing consent should be made clear to the patient.

Office Safeguards

- ♦ Access to patient records is on a need-to-know basis.
- ♦ Office layout should maximize protection of patient information.
- ♦ Physical safeguards should be in place.
- ♦ Electronic safeguards should be in place.
- ♦ Employees should sign confidentiality agreements.

Business Implications

- ♦ Contracts signed with third parties should explicitly address the protection of privacy.
- ♦ When physicians close or transfer a practice, they must comply with provincial regulations for the storage or transfer of patient records.

SAMPLES OF INFORMATION SHEETS ON STUDENT SERVICES

SCHOOL DISTRICT OF WHITESHELL STUDENT SERVICES

The Student Services program is here to help you make the most of your school years.

To help you do that, here are some of the things we can do together:

Counselling

- ♦ Counselling just means talking together confidentially to try to solve problems.
- ♦ There are lots of things in life that can make us feel upset; things like:
- ♦ Other kids picking on you;
- ♦ Having trouble learning a subject;
- ♦ Losing someone you care about;
- ♦ Friends moving away;
- ♦ Someone you care about getting sick or hurt;
- ♦ Something happening that doesn't feel right;
- ♦ Changes in your family.

Things like this can make you feel confused or afraid or worried or angry or sad or all sorts of feelings.

How does counselling help with these things?

- ♦ Counselling means having a chance to talk about your feelings and how they affect you.
- ♦ Counselling can also mean getting help solving a problem.
- ♦ You may have a problem and want to get some ideas about how to solve it.
- ♦ You may already have a solution and want to get a second opinion on it before you try it out.
- ♦ You may find that there isn't anything you can do to change the way things are, but having a chance to talk about it helps you to feel better.
- ♦ Counselling respects your confidentiality.

What does confidentiality mean?

Any thing we talk about will stay between the two of us.

There are a few cases though, where we may need to share things with someone else; cases like:

- ♦ If you ask me to talk to someone for you.

- ♦ If you or someone else is in need of protection.
- ♦ If a judge asks for information.

Classes

We will be able to do things together in class too. We can talk about things like:

- ♦ Ideas on how to do better in school.
- ♦ Ways of getting along better with classmates.
- ♦ How to solve problems.
- ♦ Ideas on how to stay safe.
- ♦ Thinking about what you will do when you are an adult.

Orientation

If you are new to the school, we will show you around, introduce you to your teachers and classmates, and help you get to know the school better.

Help with schoolwork

If you are running into difficulty with a class or subject and you're not sure what to do, we can get together and try to find some solutions for you.

This may involve talking about learning skills, or getting you in touch with a peer tutor or a resource teacher.

The Counsellor

If you would like to have a chat with me at any time, here are some ways that you can arrange it:

- ♦ Let me know when you see me around the school.
- ♦ Ask your teacher to let me know.
- ♦ Leave a note in my mailbox.

PINAWA SECONDARY SCHOOL
STUDENT SERVICES: GUIDANCE COUNSELLING

The Student Services program at Pinawa Secondary School is here to help make your high school years more educational and enjoyable by offering you services to help you deal with concerns and questions about your high school program, your career interests and plans, and any other concerns you may have about life in general.

Academic Counselling

We can help you with course selection as you enter your Senior years. Later on we will take time to find out which courses are required for your future college or university or career plans and help you to design your timetable to ensure that you have all the courses you'll need.

If you are having difficulty with a course and aren't sure what to do, we can get together to try to find solutions for you. These may involve talking about learning skills or getting you in touch with resource assistance.

Career Counselling

To help you get career information, we may do career interest inventories, aptitude tests, computerized career information, and class sessions to expand your awareness of the hundreds of career possibilities available to you. We will talk individually from time to time about your interests and get information together on careers you are curious about. Later in high school we can arrange for you to get in direct contact with people in career areas of interest through a career mentor or job shadowing program in your senior years.

Personal Counselling

There are a lot of situations in life that can make us feel upset. We may react to them with worry, fear, anger, sadness, anxiety, depression or any number of other kinds of feelings. Sometimes we don't know how to deal with a situation and would like to explore possible solutions. Other times we may have a solution and would like to get a second opinion on it. Sometimes, just talking about situations and solutions can make things a lot better. If you get a feeling like this and could use some time and talk to sort it out, stop in at our office.

A note about sharing information

In all discussions between us, you have the right to expect that anything we talk about will remain confidential. We will respect and guard your right to confidentiality very carefully, but you need to know that there are a few cases where information may be shared with someone else:

- 1) If you ask one of us to speak to someone else for you or give them information you wish them to have.
- 2) If one of us feels that you or someone else may be in danger or in need of protection.

- 3) If a court orders the release of information.
- 4) If required by law, as in the case of child abuse.
- 5) Consulting with other professionals in order to help you.

These situations are rare, but it is important that you know about them.

CHAMPLAIN SCHOOL
YOUR SCHOOL COUNSELLOR – INFORMATION FOR PARENTS

The school Guidance Counsellor offers services to students in the classroom setting, in small groups, and on an individual basis. I help children and families deal with:

- ♦ Relationships between students and between students and adults.
- ♦ Friendship issues.
- ♦ Self-esteem / self-acceptance.
- ♦ Bullying, aggression, conflict resolution and mediation.
- ♦ Learning to solve problems “non-violently.”
- ♦ Learning to accept personal responsibility for behaviour.
- ♦ Personal safety.
- ♦ Family violence.
- ♦ Emotional, physical and sexual abuse.
- ♦ “Acting out” behaviour – verbally, physically, sexually.
- ♦ Separation, divorce, loss and death.
- ♦ Newcomers to our school or country / adjusting to new situations.
- ♦ Career awareness.
- ♦ Referrals to community resources.
- ♦ Transitions to new schools.
- ♦ Student advocacy, or speaking up for the student when they need help.

Issues discussed with the Counsellor, in private sessions, are confidential. I will respect and guard your right, and your child’s right, to confidentiality. There are a few exceptions which all Counsellors in the Province adhere to. You need to know about these exceptions:

- ♦ If you ask me to speak on your behalf, or on your child’s behalf, to a third party, e.g. a Doctor, a Community Agency, a Psychologist.
- ♦ Consulting with other professionals to help your child, e.g. School Support Team.
- ♦ If a child is in need of protection, e.g. suspected abuse. I am required by law to disclose this information to the appropriate authority.
- ♦ If a child is in danger of hurting/harming themselves or others.
- ♦ If a court orders release of information, e.g. custody cases, child welfare cases.
- ♦ Requests to see files under Manitoba’s privacy laws, e.g. FIPPA, PHIA.

If you have questions or concerns about the Counselling Services offered in the school, please feel free to contact me.

INFORMATION FOR CLIENTS

This sheet is to inform you about the counselling process and what you can expect from it.

The first thing we'll do is have an assessment interview to give us a chance to get to know each other and to give me an idea of your situation and your goals for counselling.

After this first discussion:

- ♦ I will let you know if I feel I can be of assistance;
- ♦ If so, I'll give you an idea of the plan I'd like us to follow;
- ♦ If not, I'll try to give you a name and number of someone who can be of assistance to you.

If you agree to a counselling plan, we will schedule some regular meetings. Here's what will happen in those sessions:

- ♦ We will explore your situation and your thoughts and feelings about it;
- ♦ We will try to look at ways you can achieve your goals;
- ♦ I may suggest things for you to try out to help meet the goals you've chosen;
- ♦ I will try to support you in carrying out the plans you make;
- ♦ We will try to keep track of the things that are working best for you;
- ♦ When you feel that you've found solutions that work for you, our work together will be done.

Some other things you should know

- ♦ I can't tell you what you should do. I can help you think of strategies and results, but only you can know and choose which ones will work best for you;
- ♦ If issues come up that I am not qualified to deal with, I will refer you to a person who has knowledge and experience with those issues;
- ♦ If it seems that your goals are not being met after a certain length of time, I will refer you to someone else who might be better able to support your path to independence.

My practice and policy on confidentiality is governed by a number of guidelines and legislative Acts including:

- ♦ School Division policy on Privacy and Access to Information.
- ♦ The Public Schools Act.
- ♦ The Freedom of Information and Protection of Privacy Act.
- ♦ The Child and Family Services Act
- ♦ Manitoba Pupil File Guidelines
- ♦ Other Acts of Provincial and Federal law.

- ♦ Manitoba School Counsellors' Association Ethical Guidelines.
- ♦ The United Nations Convention on the Rights of the Child.

In all discussions between us you have a right to expect that anything we talk about will remain confidential. I will respect and guard your right to confidentiality very carefully, but you need to know that there are a few cases where information may be shared. These are those situations:

- ♦ If you ask me to speak with someone else for you, or give them information you wish them to have;
- ♦ If I feel a need to consult with another professional about how best to help you;
- ♦ If I feel that you or someone else may be in danger or in need of protection;
- ♦ If a court orders the release of information;
- ♦ If required by law, as in cases of child abuse.
- ♦ These situations are very rare, but it is important that you know about them.

ACADEMIC AND CAREER COUNSELLING

A number of studies have shown that parents have an important influence on a student's career choices. The school supports the inclusion of parents in academic and career decision making. We will consult with parents regarding course selection, timetable changes, independent study courses, etc. Parents and students are invited to meet together with the counsellor to discuss career planning during the senior high years.

Student Records

- ♦ All student records, including counselling records, are governed by the Freedom of Information and Protection of Privacy Act.
- ♦ The "Protection of Privacy" part of this Act ensures that student information will be used only for the purpose of providing the best educational services to the student. It ensures also that the privacy of the student will be protected.
- ♦ The "Freedom of Information" part of the Act allows a student, or their parent (up to the student being the age of eighteen), to apply for access to information in the student's records. This allows access to information that will help provide the student with the best educational services. At the same time though, it does not allow access to any information that may be harmful to someone, or invade someone's privacy.

If students, parents or staff have concerns or questions about the foregoing policies and practices, they should consult with the counsellor for clarification and a better understanding of how these issues affect the counselling process and school records.

WEBSITES OF INTEREST

Manitoba School Counsellors' Association	http://www.msca.mb.ca/
Canadian Counselling Association	http://www.ccacc.ca
Manitoba Teachers' Society	http://www.mbteach.org/
Mb Ed., Programs & Student Services	http://www.edu.gov.mb.ca/k12/specedu/guidance/resources.html

The following are two government websites where you can find information and links to other sites discussing the various Acts referred to in this manual, as well as the Acts themselves.

Manitoba Government Legislation	http://www.gov.mb.ca
Canadian Government Legislation	http://www.privcom.gc.ca

If you are inclined to do some browsing, search on titles such as: "counselling confidentiality," "information privacy," "ethics in counselling," etc. You will find many irrelevant websites, but some that are of interest to the issues involved in the practice of counselling.