

## **Notebook on Ethics, Legal Issues, and Standards in Counselling**

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### **Parent denied access to counselling notes**

As many of you know, the provincial Access to Information and Protection of Privacy Acts in Canada make provision for unresolved disputes in matters covered under these acts to be adjudicated by a commissioner. Such an adjudication, of particular interest to counsellors, took place in British Columbia in August, 2000. It involved the Southeast Kootenay School District and a mother's desire to gain access to the counselling notes of the school counsellor who was seeing her two elementary school children (Order number 00-40).

The parent's request for access to the counselling notes occurred immediately following a visit she received from Child Protection personnel. The mother argued that, as a parent, she had a right to know what had transpired between the school counsellor and her children.

The initial response of the school district authorities that they could not grant the requested access because they did not have custody of the counsellor's notes was quickly dismissed. (Cognica readers are referred to the Notebook, Winter, 2002, in which I report on a decision of the B.C. Privacy Commissioner in 1996 in another dispute involving access to the notes of a school counsellor. In that case, the Commissioner ruled that the school board, as the counsellor's employer, had ultimate jurisdiction over the notes. However, the decision in that case did not diminish the counsellor's responsibility for stewardship over her notes and for the maintenance of confidentiality. This decision was quickly invoked in this instance).

Following this initial ruling, the school board authorities were ordered to provide the Commissioner with the counselling record to assist in the determination as to whether or not the mother's disclosure request could be granted. Following his review he concluded that the mother would not be allowed to have access to the counselling notes. In reaching this decision the Privacy Commissioner concluded that the notes contained personal information given to the counsellor by the children with an expectation that it was given in confidence, and that with disclosure there was a reasonable possibility that the mental or physical health of the children would be at risk. Therefore, he decided, that in this case, the children's right to privacy would be unreasonably violated if the mother's demand was granted.

The B.C. Freedom of Information and Protection of Privacy Act, like most other such acts in Canada, outlines the conditions under which a public body, such as school board, could and should refuse a request for disclosure of personal information. It states as follows:

*19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if disclosure could reasonably be expected to*

- a) threaten anyone else's safety or mental or physical health, or*
- b) interfere with public safety*

*22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy*

In his ruling, the Commissioner provided some guidelines that will assist school boards and others to exercise their responsibility when making such challenging decisions. They were:

- There must be a careful distinction between the right of a parent to access information on 'behalf of a child' and a parent's desire to access their child's record at arms-length from the interests of the child.
- Despite the decision in this case, school counsellors' counselling notes are not, as a class of records, exempt from disclosure under the Act.
- Counselling notes, as in this case, can contain personal information as defined under the Act, and disclosure would invade children's right to personal privacy.
- Children, as in this case, can have a reasonable expectation of confidentiality when they share personal information with their school counsellor.
- A parent's 'right to know' must be balanced against the reasonable expectations of the benefits and risks when there is request to invade their children's privacy.

This decision of the B.C. Privacy Commissioner is consistent with the Access to Records provisions found on pages 15-16 of the CCA Standards of Practice for Counsellors. Members are strongly encouraged to become familiar with them, including with the following:

*School counsellors should make every effort to ensure that there is a school-based procedure in place to adjudicate any requests from parents or guardians for access to counselling records(p. 16).*

As a matter of fact, a number of privacy commissioners in their adjudication decisions have directed school board authorities to have specific provisions in place in anticipation of disclosure request under the access to information and protection of privacy acts within their respective provinces.