

BCACC

BC Association of Clinical Counsellors

Code of Ethical Conduct

**Standards of Clinical Practice
and
Guidelines
for
Registered Clinical Counsellors**



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It is recommended that all counsellors have a copy of *Balancing Conflicting Interests: A Counsellor's Guide to the Legal Process* by Maureen McEvoy and Gayla Reid. This may be obtained from the Justice Institute of BC, Social Service & Community Safety Division, 715 McBride Boulevard, New Westminster, BC V3L 5T4, Telephone: (604) 528-5608, Fax: (604) 528-5640, Website: www.jibc.bc.ca.

This document is posted on our website at www.bc-counsellors.org.

CODE OF ETHICAL CONDUCT

Introduction

The BC Association of Clinical Counsellors (BCACC) is dedicated to providing the highest standards of professional counselling, consulting, assessment, testing and training services. The Code of Ethical Conduct and Practice Standards (Code) provides guidelines and standards for Registered Clinical Counsellors (RCCs) to pursue excellence in their professional practice in serving the health and well-being of others.

The Code provides a moral framework (ethical principles) and a model for analyzing and making decisions when ethical dilemmas arise. Every ethical dilemma cannot be anticipated or regulated and more than one alternative decision may be considered ethical. Therefore, RCCs need to enhance their professional judgment through adherence to these guidelines, and the use of an ethical decision making process, including consulting with knowledgeable resources, such as the BCACC, trusted colleagues, the literature, or other reliable sources. These guidelines and standards do not take the place of legal advice that must be obtained from a lawyer. It is also important to consider personal values and whether they may in any way unfairly bias one's perceptions and decision making.

In addition, the Code of Ethical Conduct and Practice Standards provides enforceable rules and behavioural or practice standards with which RCCs must comply, and for which sanctions may be applied for non-compliance. These standards address the application of ethical principles to specific areas of practice.

The documents guiding the professional practice of RCCs have different levels of authority. In addition to the Code of Ethical Conduct and Practice Standards as developed by BCACC, counsellors must comply with various provincial and federal statutes and regulations.

Some laws bind all citizens, such as, the Federal Criminal Code, Federal and Provincial taxation laws, provincial motor vehicle legislation and reporting of child neglect and abuse. Provincial governments enact professional legislation to regulate the practice of specific professions when they are convinced that such legislation is required to protect the public from harm. BCACC continues to seek such legislation. Other statutory and case laws that affect the practice of counsellors are listed below.

Depending on the nature of the complaint, there may be three levels at which RCCs may have complaints made against them, namely, (a) charges of violating Federal criminal law, (b) charges of injury suffered at the hands of the RCC under malpractice or tort (civil) law, or (c) a violation of BCACC ethics and standards subject to disciplinary procedures as defined by the profession and consistent with the law.

The law and professional standards usually complement each other. However, the law is generally considered to take precedence over professionally defined standards should they be in conflict, and it is usually considered a personal choice and risk should one choose to disobey the law on grounds of conscience. BCACC encourages its members to consult as widely as the situation demands, and to consider all of the implications of any such decisions.

The Code of Ethical Conduct and Practice Standards, including ethical principles, as developed by the profession, is the morally highest and most aspirational regulatory document, and may require a higher standard of behaviour than required by the law. In a code of conduct some aspects of ethical principles are translated into behavioural definitions that constitute enforceable rules for professional conduct. Practice standards are incorporated along with the BCACC Code of Ethical Conduct, although in some professions they are incorporated in regulations that are attached to the professional legislation. Practice guidelines, position statements, special guidelines, etc, support counsellors in providing competent and ethical practice in specific areas of practice, and while they may help to define competency they are not binding or enforceable by themselves.

Using the Code of Ethical Conduct and Practice Standards

General Expectations

As members of the BCACC, RCCs commit that they will:

1. Adhere to the Code of Ethical Conduct, Practice Standards and appropriate application of the Guidelines.
2. Assess the ethical aspects of their practices on an on-going basis.
3. Discuss ethical issues with supervisors and colleagues.
4. Bring new ethical issues and questions to the attention of the BCACC.
5. Address perceived unethical behaviour of colleagues in an appropriate manner, which, where appropriate, emphasizes remedial clarification and education. In addressing such behaviour RCCs will consider their own motivations and avoid making malicious or vexatious complaints.
6. Accept and consider feedback with respect to their own actions and perceived unethical behaviour, and take positive steps to resolve the situation.
7. Cooperate with duly constituted committees of the BCACC that are concerned with ethics or ethical conduct.

Use of an Ethical Decision Making Process

In navigating difficult ethical issues, going through a careful process such as the one contained in the *Guideline for Ethical Decision Making* is normally appropriate.

Explanation of Principles

The Code of Ethical Conduct is based upon four fundamental ethical principles.

- *Principle I: Respect for the Dignity of All Persons and Peoples*
- *Principle II: Responsible Caring*
- *Principle III: Integrity in Relationships*
- *Principle IV: Responsibility to Society*

These principles are intended to reflect a general, commonly understood and universal moral framework. They are aspirational in nature, and the behavioural applications of these principles may vary somewhat

in the context of different cultural beliefs and expectations. However, one does not accept allegedly cultural practices that cause harm to persons and peoples.

When Principles Conflict

The four fundamental principles should each be taken into account in good ethical decision making. However, occasions will arise where the principles conflict. A mandated order of importance is impossible given the complex nature of many ethical issues. However, as a general guide:

Principle I: Respect for the Dignity of All Persons and Peoples should be given the highest weight, unless there is a clear and imminent danger to the physical safety of any person.

Principle II: Responsible Caring generally has the second highest weight, and should be carried out in ways that respect the dignity of persons and peoples.

Principle III: Integrity in Relationships will be of third priority if it clearly conflicts with the first two principles.

Principle IV: Responsibility to Society should, if it conflicts with the other principles, generally be given the lowest priority. Placing Responsibility to Society as less important in priority than the respect for the individual and individual rights reflects a Euro-North American entrenched value that is not universally held by all societies. Normally communities and societies in British Columbia will hold similar values to Principles I to III, and consequently, ways may be respectfully negotiated that do not place the collective good of the society in conflict with respect and caring for individuals. In respecting a diversity of cultural beliefs, it is important not to endorse practices that clearly harm individuals in those cultures, or that violate Canadian laws.

Principles

Principle 1

Respect for the Dignity of all Persons and Peoples

Respect for the dignity of persons provides a foundation for many other ethical principles. It is intended to recognize the inherent worth of all human beings. This includes respect for peoples, since all human beings belong to unique societies, which create human interdependence, contribute to identity, and establish the connection of all human beings to all other human beings, including past and future generations. It is recognized that a relationship of respect and caring for the natural environment is also essential for the well being and survival of humans individually and collectively.

To practice the principle of *Respect for All Persons and Peoples*, RCCs will:

Generally

- 1) Demonstrate respect for the unique worth and inherent dignity of all human beings.
- 2) Use language in all communications that conveys respect for persons and peoples.
- 3) Avoid derogatory comments about individuals or groups, including demeaning jokes based on characteristics such as ethnic and cultural background, gender, class, age, sex, sexual orientation, nationality,

colour, race, religion, marital status, physical or mental abilities, socioeconomic status, or any other preference or personal characteristic, condition or status.

- 4) Abstain from all forms of harassment.
 - 5) Refuse to participate in practices disrespectful of the rights of other persons and peoples.
 - 6) Refuse to advise, train or supply information to anyone who, in the RCC's judgment, will use the knowledge or skills to infringe on human rights.
 - 7) Make every reasonable effort to ensure that therapeutic and psychological knowledge is not used, intentionally or unintentionally, to infringe on human rights.
- Respect for Clients**
- 8) Assume primary responsibility to the client, as the direct recipient of the RCC's professional activities.
 - 9) When rendering a formal professional opinion about a person that has implications for that person's legal or civil rights, do so only on the basis of direct and substantial professional contact or a formal assessment of that person.
 - 10) Base formal professional opinions on a professional knowledge base, and document any limitations regarding the confidence they have in their results and opinion.

- Informed Consent**
- 11) Obtain free and informed consent for all services.
 - 12) Inform clients of their rights as consumers of the RCC's services, including procedures for resolving differences and filing complaints.
 - 13) If urgency requires action without obtaining informed consent, obtain that consent at the earliest reasonable time thereafter.
 - 14) Respect a client's clearly expressed wishes to involve others in the client's decision making regarding informed consent.
 - 15) Where the client is not capable of informed consent to treatment, interact with the legally designated substitute decision maker in such a way as to promote the greatest degree of self realization for the client.
 - 16) Engage in mutual and ongoing negotiation with respect to therapeutic processes.

- Privacy**
- 17) Ensure the privacy and confidentiality of client information in accordance with legal principles and professional standards.
 - 18) Engage in appropriate consultation and supervision.
 - 19) Respect the client's cultural customs and beliefs.
 - 20) If the values of the RCC conflict with those of the client to the extent that the RCC doubts his or her ability to be unbiased, communicate about the values differences and offer the option of referral to another counsellor.

- Respect for Other Individuals**
- 21) Treat family members or others connected with the client with respect, honesty, and fairness.
 - 22) Ensure the privacy of personal information in accordance with legal principles and professional standards.
 - 23) Respect the right of clients, employees, research participants, students, trainees and others to safeguard their own dignity.
 - 24) Obtain informed consent for all research activities that involve more than

minimal risk of harm, or any attempt to change the behaviour of the research participant.

Respect for Peoples

- 25) Demonstrate respect for the diversity of persons and peoples.
- 26) Demonstrate respect for the customs and beliefs of diverse cultures, unless such customs and beliefs seriously contravene the principle of respect for dignity of persons or peoples, or causes serious harm to their well-being.
- 27) Be aware of the meaning and impact of one's own ethnic and cultural background, gender, class, age, sex, sexual orientation, nationality, colour, race, religion, marital status, physical or mental abilities, socioeconomic status, or any other preference or personal characteristic, condition or status.
- 28) Actively engage in broadening one's own knowledge of ethnic and cultural experiences.
- 29) Appropriately explore cultural differences in therapeutic situations.
- 30) Where the therapist's beliefs may adversely affect the therapeutic outcome, offer the alternative of an appropriate referral.

Respect for Self

- 31) Engage in self-care activities, in recognition of the unique professional stresses involved in counselling practice, and in order to maintain optimal levels of professional practice.
- 32) Evaluate professional activities for evidence of the RCC's personal biases or discriminatory attitudes and practices.
- 33) Obtain personal therapy or take other appropriate steps where the RCC's personal issues or stresses interfere, or are likely to interfere, with the RCC's ability to be of professional assistance.
- 34) Limit self disclosure in counselling clients only to that which serves the client's best interests.
- 35) Protect and safeguard themselves from serious harm and violations of their own rights in carrying out their professional activities.

Principle 2 Responsible Caring

Responsible caring means that all interactions involving clients are made for the client's benefit. This includes thorough assessment, as well as competency in skills appropriate to the situation, the client, and the social and cultural context.

To practice the Principle of *Responsible Caring*, RCCs will:

Generally

- 1) In all activities connected with professional practice, demonstrate active concern for the well being of individuals, families, groups and communities.
- 2) Terminate an activity when it is clear that the activity carries more than minimal risk of harm and is found to be more harmful than beneficial, or when the activity is no longer needed.
- 3) Respect the abilities of individuals, families, groups and communities to

make decisions on their own behalf and to care for themselves and each other.

- 4) Remain aware of the RCC's own self-care needs and vulnerabilities.
- 5) Engage in continuous learning and professional development based on ongoing assessment of needs.
- 6) Model effective and respectful professional boundaries.

Competent Caring

- 7) Limit practice and supervision to the areas of competence in which proficiency has been gained through education, training or experience.
- 8) Maintain competency in all practice areas through continuing education, supervision or peer consultation, as per current professional standards.
- 9) When developing competency in a professional service that is new, obtain appropriate training and engage in ongoing consultation with a professional having expertise in the provision of that service.
- 10) Refer to other professionals, technical or administrative resources when referrals are in the best interests of the client(s).
- 11) Ensure that emergency needs of clients are addressed by appropriate professionals during the RCC's absences from practice.

Carefully Managing Risk

- 12) In all activities connected with professional practice, take care to maximize benefits and minimize potential harm to individuals, families, groups and communities.
- 13) Maintain appropriate records of all interactions concerning each client, using client-centered language.
- 14) Engage in ongoing supervision or consultation.
- 15) Do everything reasonably possible to stop or offset the consequences of actions by others when those actions are likely to cause serious physical harm or death. This may include reporting to appropriate authorities, to an intended victim, or a family member or other support person who can intervene, and would be done even where a confidential relationship is involved.
- 16) Act to stop or offset the consequences of seriously harmful activities being carried out by another RCC or any other professional caregiver, when there is objective information about the activities and the harm, and where these activities have come to their attention outside of a confidential client relationship. Action may include reporting to the appropriate regulatory body, authority, or committee for action, depending upon the RCC's judgment as to what is appropriate to offset the harm, and upon regulatory requirements for the body in question.
- 17) Collaborate and consult with other professionals as needed.
- 18) Act to minimize any negative impact of their research activities on research participants.
- 19) As far as possible, correct or offset harmful effects that occur in connection with research, professional practice or extra-professional activities.

Principle 3 Integrity in Relationships

Ethics and values are largely expressed in the relationships that RCCs have with self and with others. To have ethical integrity they remain aware of their values and the values of their communities. They are honest and straightforward in their communications, honestly assess and seek feedback on their performance, and avoid conflicts of interest that may compromise their professional activities.

To practice the principle of *Integrity in Relationships*, RCCs will:

Generally

- 1) Aspire to the highest integrity possible in every situation.
- 2) Accept responsibility for the consequences of their actions.
- 3) Avoid the exploitation of others for personal, professional or financial gain.
- 4) Avoid conflicts of interest when possible, declare the conflict of interest when it is inappropriate to avoid, and take measures to avoid adverse effects of conflict of interest.
- 5) Strive for impartiality in all professional endeavours.

Communicating in Integrity

- 6) Commit to truthfulness and accuracy in communications.
- 7) Avoid incomplete disclosure of information unless complete disclosure is culturally inappropriate or violates the confidentiality of others, or carries the potential to do serious harm to individuals, families, groups or communities.
- 8) Use best judgment in accepting gifts or other benefits, considering the situation, diagnosis, motivation, and vulnerability of the client. Gifts or benefits from clients should be infrequent and of minimal value and not compromise the professional relationship.

Connecting with clients

- 9) Accurately state the nature of their training to clients.
- 10) Where the needs of the client exceed the ability to be of professional service, offer an appropriate referral.
- 11) Where the RCC is aware, or ought to be aware that the RCC's own personal issues, attitudes or stresses are interfering, or are likely to interfere with the RCC's ability to be of professional assistance refrain from beginning or continuing a professional relationship with a client.
- 12) If the RCC develops such personal issues after the professional relationship has commenced, obtain professional assistance to determine whether to limit, suspend or terminate the professional relationship.
- 13) If it becomes necessary to limit, suspend or terminate treatment, assist the client to obtain the services of another qualified professional.

Relationship as a conscious undertaking

- 14) Not exploit or allow their professional relationships to be exploited in order to further personal, political or business interests at the expense of the best interests of the RCC, their clients, research participants, students, employers, or others.
- 15) Avoid beginning or continuing a professional relationship where they are aware, or should be aware, that harm may occur as a result of a current or previous psychological, familial, social, sexual, emotional, financial, supervisory, political, administrative or legal relationship with the client or a relevant person associated with or related to the client.
- 16) Avoid dual relationships or the perception of a dual relationship in

circumstances where the existence of a dual relationship may adversely affect the professional relationship.

- 17) Where a dual relationship exists or is perceived to exist, take immediate and reasonable steps to address any resulting harm or the potential for such harm.
- 18) Recognize power differential that exists in the counselling relationship, and the potential for misuse or abuse, and therefore refrain from engaging in a sexual or other intimate personal relationship with any client, both during and within at least 24 months after the conclusion of treatment. The 24 month figure represents a **minimum**. The deeper the counselling relationship, the longer this period should be. The 24 month minimum period should be extended indefinitely if the situation, diagnosis or vulnerability of the client suggests the possibility of exploitation on the basis of trust and dependency established during the previous counselling relationship.
- 19) In particular, during and up to at least 24 months following the conclusion of the counselling relationship, refrain from:
 - Verbally or physically seductive behaviour towards the client or former client, directly or indirectly;
 - Sexual intercourse or other sexual behaviour with the client or former client;
 - Entering into a financial or other potentially exploitive relationship.
- 20) In recognition of the inevitable power differential that exists in an instructing or supervisory relationship, refrain from engaging in a sexual or any other intimate personal relationship with students, trainees or supervisees.
- 21) In particular, refrain from:
 - Any verbally or physically seductive behaviour towards the student, trainee or supervisee;
 - Sexual intercourse or other sexual behaviour with the student, trainee or supervisee;
 - Entering into any sort of relationship with a student, trainee or supervisee that a reasonable person would view as exploitive given the standard currently prevailing in the professional or academic community.

Principle 4

Responsibility to Society

RCCs have a responsibility to the society in which they live and work and have dedicated themselves to the well being of human beings in that society. To practice the principle of *Responsibility to Society*, RCCs will:

- | | |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ethical knowledge and awareness | <ol style="list-style-type: none">1) Develop and maintain awareness of their ethical responsibilities and competencies.2) Adequately train students and supervisees in ethical responsibilities and competencies. |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- 3) Challenge all RCCs, including oneself, to be personally accountable to the values and ethical principles of the profession.
 - 4) Commit to continuous improvement, which includes sensitivity to the impact of their own actions, openness to feedback and ideas, and correcting of their own behaviour.
 - 5) Understand the statutory, regulatory and common law framework that governs the profession.
- A holistic approach**
- 6) Recognize the need to work collaboratively with other agencies, professional disciplines, and individuals in order to reasonably serve the best interests of individuals, groups and society.
- A scientific and professional body of knowledge**
- 7) Take responsibility to increase scientific or practical knowledge within the profession as a means of promoting the well being of society and all its members.
 - 8) Accept responsibility to do what they can to ensure that oppressive laws and structures are changed.
 - 9) Promote and advance ethical principles in research, professional and educational activities.
- Establishing fees**
- 10) Establish fees that are deemed fair and consistent with prevailing fee structures in the community.
- Contribution of professional skills**
- 11) When considering the possibility of pro bono work, determine the most appropriate and beneficial use of their time and talents to help meet the discipline's collective responsibility to society. In doing so RCCs should take into account the need for reasonable boundaries, and the appropriate balance for their own circumstances between pro bono and paid work.
- Social Responsibility**
- 12) Avoid engaging in dishonourable or questionable conduct that casts doubt on the RCC's professional integrity or competence, or reflects adversely on the integrity of the counselling profession.

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Approved by the Board of Directors
October 25, 2008

STANDARDS OF CLINICAL PRACTICE

STANDARD FOR INFORMED CONSENT TO CLINICAL COUNSELLING AND THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

INTRODUCTION

This document sets out the standards a clinical counsellor should follow to obtain a client's informed consent to counselling therapy, services and treatment ("clinical counselling"), and to the use, collection and disclosure of personal information.

The BCACC Board has approved a separate standard on *Payment for Clinical Counselling Services*, which sets out the standards a counsellor should follow to obtain a client's agreement for the payment of clinical counselling services.

All standards are interpreted and applied with reference to the BCACC *Code of Ethical Conduct*. RCCs should familiarize themselves with the *Code*, and may wish to consult in particular paragraphs 11-17, 19, 22, 24, 25 and 27 under Respect for the Dignity of All Persons and Peoples, paragraphs 3 and 6 under Responsible Caring, and paragraphs 6 and 7 of Integrity in Relationships.

INFORMED CONSENT TO CLINICAL COUNSELLING

Obtaining the informed consent of a client to the proposed clinical counselling is a critical, first-step in the counselling relationship. If a counsellor provides counselling services without consent, the counsellor could be liable for any resulting negative consequences.

Consent must be informed. That is, the person giving a truly informed consent needs to have sufficient information to fully understand the nature of the treatment being proposed. The counsellor must therefore provide the client with sufficient information to allow the client to understand the purposes, risks and benefits of the proposed counselling. The counsellor must also allow the client to ask questions and receive clear and relevant answers that address the client's concerns.

Generally, the sort of information a counsellor must provide to a client before the client can give informed consent is information that a reasonable person in the client's particular circumstances would require so as to understand the proposed services and make an informed decision. Usually, this will include information about the client's condition or situation for which the services are being proposed, the nature of the proposed clinical services, the risks and benefits of those services that a reasonable person would expect to be told about, as well as any clinical options, including not doing anything. Further, a counsellor has a duty to communicate with a client in a way that is appropriate to that client's particular skills, ability and language.

In most situations, a counsellor can presume that every adult client the counsellor sees is capable of giving, refusing or revoking consent to clinical counselling services. In the rare circumstance that the counsellor believes that an adult client is not capable of giving or is unable to communicate informed consent (e.g. because of mental defect or a physical, psychological or emotional incapacity, as examples), the counsellor should obtain consent from an authorized substitute decision maker.¹ Legally, a client under the age of 19 who is mature enough to and does fully understand the nature of the therapy can also give their consent to their own therapy. The child in that instance can give consent without a parent or guardian's knowledge or approval.²

Once the client gives consent, this does not end the process. The counsellor must ensure that informed consent continues throughout the counselling relationship. The counsellor may have to seek the client's consent again if circumstances change, such as when the nature of counselling services changes significantly from what was originally agreed, or when a new treatment modality is proposed. The general rule is, when in doubt, seek to renew informed consent.

Consent can be expressed in several ways, from the very formal and overt to the merely implicit. Some common forms of consent are:

The written Consent Form. These forms are of value for dealing with general matters such as overall therapeutic orientation or other items that will apply to all clients throughout the therapy process. However, they should **never** be interpreted as a blanket consent to any and all treatment.

1. Other written consent. This may be an additional Consent Form, or it may be as simple as asking the client to sign off on a short note in the clinical records. Written consent should be considered for significant changes or the introduction of new therapeutic processes as the therapy progresses.
2. Verbal consent. Counsellors should however ensure that there are no language or comprehension barriers that can void verbal consent.
3. Implied consent. This would include a nod of the head or other, similar gesture.
4. A client can also consent to clinical counselling by action or conduct, such as voluntarily giving the counsellor information and participating in therapy.

A more formal, overt consent, rather than informal or implied consent techniques should be used at the outset as well as for particularly sensitive or emotionally difficult clinical interventions, and in situations which represent a significant shift from previous therapy you have been conducting with the client.

Even where consent is very informal or implied, the counsellor should document the consent. For example, a counsellor can make a note in the clinical record that the client was informed and gave an

¹ As it is highly unlikely that a clinical counsellor will be providing counselling services to a client who is incapable or unable to give informed consent, this standard will not address the requirements for obtaining substitute consent. Counsellors who do find themselves in such a situation should obtain independent advice before proceeding.

² Bryce, G. "Obtaining Consent from Children", 12:2 *Insights* at 11, 12 & 20 (Summer 2000), see also Bryce, G. & M. Sandor "Consent for Counselling Children during Marital Breakdowns", 13:3 *Insights* at 12 to 14, 25 to 26 (Winter 2002). Both articles are also posted at the BCACC website.

implied or an oral consent.

The client can also withdraw consent at any time, thus effectively ending the counselling relationship. The withdrawal of consent may also be expressed in both formal and overt ways or be merely implied. Counsellors should be sensitive to the possibility of an implied withdrawal of consent and should check in with the client if they think this may be occurring. In so doing counsellors would be well advised to remain aware of the effects of culture, to educate themselves as to these effects, and to seek information from the client about the client's cultural norms.

CONSENT TO USE OF PERSONAL INFORMATION

The *Personal Information Protection Act* (PIPA) came into force on January 1, 2004, and applies to all self-employed counsellors in private practice who are not employed by or under contract with an agency that may itself be subject to the PIPA or other similar legislation outside the jurisdiction of British Columbia.

This standard is intended to highlight the legal obligations of counsellors whose practices are subject to PIPA or similar legislation outside the jurisdiction of British Columbia. The legal obligations set out under PIPA have consolidated prior common law, statute, and ethical principles to create comprehensive instructions for the collection, use and disclosure of personal information. RCCs in private practice in British Columbia are to inform themselves as to the impact of PIPA and ensure that they are following practices consistent with PIPA. RCCs seeking further information about PIPA may consult *Personal Information Protection Act: A Counsellor's Guide for Developing Client Personal Information Protection Policies and Procedures* (approved by the Board on October 16, 2004 and available on the BCACC website). RCCs should also not hesitate to seek independent legal advice.

Employed or contract counsellors should follow their employer's privacy policies and procedures to ensure compliance with the appropriate privacy statutes.

Personal information is defined as "information about an identifiable individual". It is likely that most of the information contained in clinical records will be information about the client him- or herself. Nevertheless, it is important to remember that the person having a privacy interest in the information is the person who is the subject of the information, whether they are your client or not. Personal information, as defined by PIPA, about another person that has been disclosed by the client in therapy, may not be disclosed pursuant to a consent given by your client. Your client is not the person who owns that personal information. In such situations it is appropriate to redact records prior to disclosure to remove the personal information belonging to others. If there are any doubts about what should be disclosed, RCCs should not hesitate to seek independent legal advice.

Under PIPA, the principle of informed consent applies. The counsellor must provide the client with sufficient information to allow the client to give informed consent to the collection, use and disclosure of the client's personal information. While PIPA sets out certain exceptions to the consent requirement and allows a counsellor to rely on deemed consent in certain situations, as a matter of practice BCACC recommends that RCCs document a client's consent to the collection, use and disclosure of the client's personal information.

Section 8(3) of PIPA allows a counsellor to collect, use or disclose personal information about a client for specified purposes if four conditions are met:

- (a) The counsellor provides the client with a notice, in a form the client can reasonably be considered to understand, that the counsellor intends to collect, use or disclose the client's personal information for those purposes,
- (b) The counsellor gives the client a reasonable opportunity to decline within a reasonable time to have his or her personal information collected, used or disclosed for those disclosed purposes,
- (c) The client does not decline, within the time allowed under paragraph (b), the proposed collection, use or disclosure, and
- (d) The collection, use or disclosure of personal information is reasonable having regard to the sensitivity of the personal information in the circumstances.

CONTENTS OF A GENERAL CONSENT FORM

It is good practice to use a general consent form that covers both information about therapeutic modality and PIPA requirements as to the collection, use and disclosure of personal information (although the general consent form, as previously noted, should not be relied upon as giving a blanket consent).

The consent form should be separate from the payment agreement between the counsellor and the client.

A general consent form should include:

1. The counsellor's name, academic qualification(s), professional membership in BCACC and professional registration number.
2. A description of the nature of the counsellor's professional practice, i.e. the counsellor's therapeutic orientation.
3. A brief description of the benefits of clinical counselling, taking into account the counsellor's orientation; benefits could include, for example, gaining personal insights, learning new ways to cope with or solve problems, developing new skills, and changing unwanted behaviours.
4. A brief description of the known or anticipated risks of clinical counselling, taking into account the counsellor's particular orientation; risks could include, for example, evoking strong emotions or difficult memories, changes in self-awareness, and different ways of relating to others.
5. A description of the purposes for which the counsellor will collect, use and disclose the client's personal information, including disclosure of information to third parties (as required by PIPA).
6. The client's rights to access the information in their clinical records or to obtain a copy of those records, and the counsellor's fee for this service, if any.
7. The client's right to refuse particular therapeutic modalities and to withdraw consent to counselling at any time during the counselling process.
8. That all information provided by the client to the counsellor will be kept confidential, subject to common law and statutory exceptions. The exceptions include but are not limited to the mandatory reporting of suspected child abuse,³ the possible reporting of risk of serious harm to

³ Bryce, G. "Reporting Suspected Child Abuse or Neglect: An Exception to a Counsellor's Duty of Confidentiality", part 1 @ 11:2 *Insights* at 9-10 (Summer 1999), and part 2 @ 11:3 *Insights* at 10-11 (Winter 1999). This article is also posted at the BCACC website.

self or other,⁴ or when so ordered by a court of law.

9. If a client has a concern and is not satisfied that the RCC has addressed that concern, the client's right to then file a written complaint against the RCC with the BCACC and contact information for that purpose (see paragraph 12 under Respect for the Dignity All Persons and Peoples in the BCACC *Code of Ethical Conduct*).
10. The client's and counsellor's names and signatures, and the date the form was signed by each.
11. Other items can and should be included depending on the particular circumstances of the client or practice of the RCC, where it is possible that they will impact the client's ability to give a truly informed consent.

Both counsellor and client should have a copy of the signed consent form, with the counsellor keeping the original.

*Standard for Informed Consent to Clinical Counselling
and the Collection, Use and Disclosure of Personal Information
Approved Board of Directors
October 16, 2010*

⁴ Bryce, G. "A Counsellor's Duty to Warn Foreseeable Victims of a Client's Violence", 14:1 *Insights* at 10 to 12, & 25 (Spring 2002). This article is also posted at the BCACC website.

PAYMENT FOR CLINICAL COUNSELLING SERVICES

Practice Standards

INTRODUCTION

This document sets out the standards a clinical counsellor should follow to obtain a client's agreement for the payment of counselling fees and other charges.

The BCACC Board has approved a separate standard for *Informed Consent to Clinical Counselling and The Collection, Use and Disclosure of Personal Information*. The BCACC has produced a recommended fee schedule that counsellors can use to set their fees; those recommended fees are not part of these standards.

PAYMENT FOR CLINICAL COUNSELLING

How a client will pay for counselling services and the consequences of missed appointments or not paying bills on time are important topics for counsellors to address with their clients. Disputes over billing practices have been a source of a number of complaints filed against counsellors, and such complaints could often be avoided with better communication between counsellor and the client on these issues.

BCACC recommends that before the first session, counsellors and clients agree on the session fee and length, as well as the time and method of payment. Further details of a counsellor's billing policies and procedures - including how they will apply in a particular client's circumstances are normally discussed and agreed on at the first session. A counsellor can either document the terms and conditions agreed on in the clinical notes or ask the client to sign a payment agreement. As well, payment policies included in a counsellor's brochure or given to the client as a separate handout have documentary value.

Occasionally clients may request that receipts be issued in advance or to a different person. RCCs must issue receipts for services that have actually been rendered. To do otherwise can make the counsellor a party to a fraud. A counsellor may agree to give a client credit for a service that has been provided, and issue a receipt, but the terms of the loan must be clearly understood by the client and agreed to in writing under a separate agreement. Such an agreement should be drafted with legal assistance.

All standards are interpreted and applied with reference to the BCACC *Code of Ethical Conduct*. RCCs should familiarize themselves with the *Code*, and may wish to consult in particular paragraphs 5 and 35 under Respect for the Dignity of All Persons and Peoples, paragraphs 1, 6, 12 and 19 under Responsible Caring, paragraphs 3-6 and 14 of Integrity in Relationships and paragraphs 6 and 9-12 under Responsibility to Society.

CONTENTS OF A PAYMENT AGREEMENT

To help counsellors meet their ethical responsibilities and to ensure that the client has a clear understanding of counsellor's billing practices, the BCACC recommends that the following information be considered for inclusion in any payment agreement the counsellor may establish with a client:

- The counsellor's name, academic qualification(s), professional membership in BCACC and professional registration number, mailing address, phone number and other contact information.
- The client's name, mailing address, phone number and other contact information.
- The length of each session and the agreed frequency of sessions at the outset, with a provision that this may be changed by mutual agreement.
- The fee that the counsellor will charge for providing the counselling services to the client (usually expressed as a per-session fee) and any taxes payable on that fee (e.g. GST).
- The client's responsibility to inform the counsellor in advance of missed sessions and how the client can so inform the counsellor.
- The counsellor's policy concerning charging for missed appointments if the client does not provide sufficient advance notice, including the minimum period of time (e.g. 24 hours) that the counsellor requires for advance notice.
- The counsellor's policy concerning charging for appointments where the client is late.
- If another person or an organization will reimburse the client after the client has paid the counsellor's fee, the client's responsibilities should the other person or organization not pay all or part of the fee, and that it is the client's responsibility to confirm the scope of coverage.
- If another person or an organization will pay the counsellor's fee (including a missed appointment fee) instead of the client, directly to the counsellor, what the client will do to ensure that direct payment by the other person or organization is made to the counsellor.
- When the counsellor will expect or request payment (e.g. at the start or end of each session, on a weekly or monthly basis), how the counsellor will communicate a request (e.g. by presenting the client with a written statement of account), and when the counsellor will issue receipts acknowledging payment.
- The counsellor's practice with respect to overdue or unpaid statements of account (e.g. interest rate, start date for interest charges), the counsellor's collection options or policy (e.g. whether or not a second statement or a demand letter will be sent and when, when the unpaid bill would be sent to a collection agency, when the client would be sued in Small Claims Court, etc.). If the unpaid bill is to be referred to a collection agency or pursued in Small Claims Court, a counsellor should not charge a client an additional collection fee. But a counsellor would be entitled to claim interest charges on the unpaid fee, so long as the charges are clearly stated and agreed to by the client at the start of the sessions.
- If a client has a concern about the counsellor's billing or collection practices and is not satisfied that the counsellor has addressed that concern, the client may contact the Registrar of the BC Association of Clinical Counsellors at 1-800-909-6303.
- The client's name and signature, and the date that the payment agreement was signed by the client.
- The counsellor's name and signature, and the date that the agreement was signed by the counsellor.

As a general rule, written payment agreements become more necessary as payment arrangements with a particular client or in a particular practice become more complex. Because a verbal discussion and agreement (documented in clinical notes) may well be sufficient or preferable in many counselling situations, and because written payment agreements may differ from client to client, a payment agreement should be separate from the counsellor's informed consent form.

If a counsellor develops a standard payment agreement form (whether part of the consent agreement or not), the counsellor should strike-out those payment terms that do not apply to a particular client signing the form. Likewise, a payment agreement can be modified by writing in new terms or conditions. In either case, the counsellor and the client should initial the changes. A copy of the payment agreement should be given to the client.

The BCACC recommends that RCCs use a payment agreement even if the RCC is being paid directly by a third party, such as an Employee Assistance Plan. The payment agreement should specify if the client will be responsible for paying any unpaid amount if the full or partial payment from the third party is not received within a specified time period.

Payment for Clinical Counselling Services, Practice Standards
Approved Board of Directors
October 16, 2010

STANDARD FOR THE CONTENT OF CLINICAL RECORDS

INTRODUCTION

This standard focuses on the content of an RCC's clinical records and identifies the sort of information that counsellors are expected to record and maintain in their clinical records.

Separate standards have been developed to help counsellors in private practice comply with their obligations concerning the collection, use and disclosure of a client's personal information, as set out under the *Personal Information Protection Act (PIPA)*, as well as the requirements in relation to informed consent. Therefore, the Standard for the Content of Clinical Records should be read and applied in conjunction with the following:

- *Personal Information Protection Act: A Counsellor's Guide for Developing Client Personal Information Protection Policies and Procedures* (approved by the Board on October 16, 2004).
- *Informed Consent to Clinical Counselling and the Use, Collection and Disclosure of Personal Information* (approved by the Board on October 16, 2010).

All standards are interpreted and applied with reference to the BCACC *Code of Ethical Conduct*. RCCs should familiarize themselves with the *Code*, and may wish to consult in particular paragraphs 17 and 22 under Respect for the Dignity of All Persons and Peoples, paragraph 13 under Responsible Caring, paragraphs 6 and 7 of Integrity in Relationships, and paragraph 6 under Responsibility to Society.

DEFINITIONS

In this Standard:

"clinical record" means any method used to record a client's personal information and includes all files, materials and information regarding contacts with or about a client

"personal information" has the meaning prescribed under the PIPA (i.e. "information about an identifiable individual and includes employee personal information but does not include (a) contact information, or (b) work product information")

CONTENT OF CLINICAL RECORDS

A counsellor must ensure that clinical records contain:

- Client identifying information, such as: name, birth date, address and phone numbers, next of kin, doctor and medications.
- Information about how and when the client was referred to the counsellor, if applicable.
- Information concerning the client's presenting problem and assessment data.
- Documentation of written or verbal service contract with client(s); i.e. payment, goals, objectives, treatment modalities and evaluative criteria of contract.
- Documentation of the client's informed consent.
- Information about the client's ability to make a voluntary choice.
- A standardized case contact record of all contact with the client. The minimum contents of a case contact record are the date(s) of contact, duration, form and content of contact.
- Reports, tests or other evaluative results, and formal consultations concerning the client.
- Documentation of the client's agreement to release personal information to a third party, except where the counsellor is allowed to make such disclosures under PIPA.

- Documentation of any release of information to a third party, including a copy of any written correspondence.
- Documentation of a client's request for access to the clinical records and the outcome of such a request.
- Information on the ending of the clinical relationship (i.e. "termination").
- Documentation that the client has been informed of the ability to make a complaint to the BCACC.
- Documentation of the progress and outcome of a complaint that has been initiated against the RCC by or in relation to the client.

ADDITIONS AND CORRECTIONS

Client requests for changes to the clinical records must be recorded along with a note as to whether the request was acted upon and why or why not. All additions and corrections to the clinical records must be dated and initialled.

REFERENCES

- American Association for Marriage and Family Therapy, Code of Ethics (July 1, 2001).
- Beamish, S., Melanson, M. and Oladimeji, M. (1998). Client Rights in Psychotherapy and Counselling. Canadian Counselling Association. Standards of Practice for Counsellors. (2001).
- Canadian Psychological Association. Companion Manual to the Canadian Code of Ethics for Psychologists. (3rd ed.). (2001).
- McEvoy, M. and Reir, G. (1999). Balancing Conflicting Interests: A Counsellor's Guide to the Legal Process. (Updated). New Westminster, BC: Justice Institute of British Columbia.
- Truscott, D. and Crook, K. (2004). Ethics for the Practice of Psychology in Canada. Edmonton, AB: University of Alberta Press.
- Turner, D. and Uhleman, M.R. (2006). A Legal Handbook for the Helping Professional. (3rd ed). Victoria, BC: Sedgewick Society for Consumer and Public Education.

Standard for the Content of Clinical Records
Approved Board of Directors
October 16, 2010

STANDARD FOR PROMOTING AND ADVERTISING SERVICES

This Standard is to ensure that Registered Clinical Counsellors (RCCs) who deliver clinical services shall accurately and completely represent themselves to clients. The primary intention behind the promotion or advertising of services should be to fully respect and support a prospective client's ability to make informed judgments and choices. This Standard applies regardless of the mode or forum of promotion or advertising chosen, and includes, but is not limited to, promotional statements made during presentations, in print or other media advertising, on websites, faxes or email, or on personal web pages, social networking web sites, text messages or pre-recorded telephone messages.

All standards are interpreted and applied with reference to the BCACC *Code of Ethical Conduct*. RCCs should familiarize themselves with the *Code*, and may wish to consult in particular paragraphs 1, 2, 5, 11, 23 and 25 under Respect for the Dignity of All Persons and Peoples, paragraphs 1, 3 and 12 under Responsible Caring, paragraphs 1, 3, 4, 6, 7, 9, 14, 16 and 18-21 of Integrity in Relationships and paragraphs 9 and 12 under Responsibility to Society.

An RCC should never:

1. Make public statements that are false, deceptive, misleading or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their clinical practice or other work activities, or those persons or organizations with which they are affiliated.
2. Solicit testimonials, expressly or by implication, from clients or other persons who, because of their particular circumstances, may be vulnerable to undue influence.
3. Use their place of employment or ongoing institutional affiliation to actively recruit or gain clients, supervisees, or consultees for their private practices.
4. Use their professional or employment positions on Boards, Councils Committees, or Agencies to solicit clients, or to seek unjustified personal gains, unfair advantage or unearned goods or services.

An RCC should:

1. Limit personal information they provide to that which is relevant to the client's informed consent to engage in therapy with the RCC. This would include information such as:
 - The RCC's name
 - Highest relevant degree conferred,
 - Provincial registration/certification, including number
 - Any national certification, including number
 - Other relevant certifications and training

- Address
 - Telephone number
 - Office hours
 - Types of issues with which the RCC has competency
 - A clear explanation of types of services offered
 - Cost of services
2. Consider carefully the use of testimonials in advertising or promoting their practices. It is preferable that testimonials used in advertising be unsolicited unless it is entirely clear that there is no possibility of undue influence or the appearance of such influence.
 3. At presentations or other public events, seek permission from event organizers and/or the person or organization requesting the RCC's appearance, prior to distributing any materials promoting the RCC's practice or other cause with which the RCC is associated.
 4. Make reasonable efforts to correct inaccurate statements made by others about themselves or the profession of counselling.
 5. Display their Certificate of Registration in a prominent place in their office or therapy room. Such certificate shall be removed from display upon resignation or termination of registration.

Acknowledgements

American Counseling Association (2005). *Code of Ethics*.

American Mental Health Counselors Association. (2010) *Code of Ethics*.

American Psychological Association (2010). *Ethical Principles of Psychologists and Code of Conduct*.

Standard for Promoting and Advertising Services

Approved Board of Directors

October 16, 2010

STANDARDS FOR WRITING COURT-ORDERED REPORTS

As with all other tasks within our scope of practice, preparing and writing court-ordered reports requires applicable adherence to our ethical principles of respect, informed consent, competence, confidentiality, and integrity.

It is incumbent upon the writer to be knowledgeable of, and compliant with, particular standards and other requirements of specific reports; for example, child custody and access reports, and reports written on behalf of third parties such as ICBC or WCB.

The writer must also maintain vigilance against personal or gender bias in the preparation, writing and defense of such reports. Appropriate consultation will be obtained to compensate for potential bias.

Unless specific formats for ordered reports are mandated, court-ordered reports should delineate and cover the following categories:

1. **QUALIFICATIONS OF WRITER**

- a) Relevant education, training, professional credentials and membership, and experience.
- b) Past and/or present expert witness designation of writer.

2. **EXPLANATION OF REPORT**

- a) Who requested or ordered the report and why.
- b) Purpose of report - including whether it is an assessment and/or treatment summary.
- c) Task of writer.
- d) Names, birth dates, and addresses of subject parties.

3. **SOURCES OF INFORMATION**

- a) Listed at beginning of report - names of sources of information for the report, or instruments used (i.e. phone or in person interviews, documents reviewed, limits to interpretation of any testing or assessments utilized, applicable caveats).
- b) Includes the relationship of all sources to the subject parties of the report.
- c) All personal sources of information must be informed at the outset of limits to confidentiality.
- d) Only writers duly qualified should interpret other relevant assessments. In most cases, it is better to attach copies to the report of such assessments.
- e) Unless interviews of sources are recorded electronically, detailed written notes must be made either during the interview or immediately after. Names of the sources, date, time, location, and context must be included.
- f) For reports involving contending parties, sources of information must be equitably balanced.
- g) Facts, observations, impressions, and opinions must be clearly differentiated in notes.

4. **BODY OF REPORT**

- a) Presented in orderly manner in compliance with court's directive and writer's style.
- b) Interpretations must be identified as such and supported by information obtained in the investigation.
- c) To be included in the report, all current and historical information must relate directly to the purpose and focus of the report.

5. **CONCLUSIONS AND RECOMMENDATIONS**

- a) Involves summary of salient information and writer's assessment of relevant issues.
- b) Recommendations for the court's consideration in view of the writer's conclusions.
- c) No recommendation for disposition unless writer has done sole assessment.

References:

Balancing Conflicting Interests: A Counsellor's Guide to the Legal Process

Maureen McEvoy and Gayla Reir, 1999 (updated)

Clinician's Thesaurus 4th Edition: The Guidebook for Writing Psychological Reports

Edward L. Zuckerman, 1995

Custody and Access Guidelines Ontario College of Certified Social Workers, 1995

Esser, T.J. (1974)

Effective report writing in vocational evaluation and work adjustment training.

(Available from Materials Development Center, Dept. of Rehabilitation and Manpower, University of Wisconsin, Menomonic. WI54751)

Sattler, J.M. (1988)

Assessment of Children (3rd Ed.) San Diego: Author

Zimmerman, I.L., & Woo-Sam, J.M. (1973)

Clinical Interpretation of the Wechsler Adult Intelligence Scale. New York: Grune and Stratton.

Standards for Writing Court-Ordered Reports

Approved Board of Directors

March 4, 2000

CHILD CUSTODY AND ACCESS
ASSESSMENTS AND REPORTS

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CHILD CUSTODY AND ACCESS ASSESSMENTS AND REPORTS

INTRODUCTION

Clinical counsellors assess parental custody of and access to children in the context of marital breakdowns and similar situations, and counsellors prepare custody and access reports to document their findings and recommendations. Sometimes a court orders pursuant to section 15 of the *Family Relations Act* a counsellor to prepare a custody and access report. Other times the parents (jointly or separately) request an assessment for the purposes of helping them resolve disputes concerning custody and access. Regardless of how a counsellor has become involved, the BCACC recognized that there is a need to establish standards of professional practice concerning child custody and access assessments and the resulting reports. This document sets out the Association's guidance and expectation for these services. It was approved by the Board pursuant to section 30(1)(b) of the BCACC Bylaws.

The courts play a significant role in supervising the quality of the custody and access reports they order pursuant to section 15 of the *Family Relations Act*, as well as the reports that the parents may submit to the court without an order. As such, the BCACC Board has adopted a separate policy that explains the Association's jurisdiction over public complaints against clinical counsellors concerning the production of reports that have been or will be considered by the courts. Notwithstanding the effect of that policy, the standards set out in this document can be used by the Association, the courts and others to assess the quality of the custody and access assessments that are undertaken by clinical counsellors and their resulting reports. Most importantly, counsellors can use these standards as a guide to maintain their skills in this growing area of clinical practice.

The standards set out in this document reflect the minimum level of competency that is expected of a counsellor in private practice who may be appointed by the courts or at the request of one or both parents to undertake a custody and access assessment. While these standards articulate the requirements for counsellors who prepare custody and access reports, reference should also be made to the more general guidance that is provided to counsellors within the BCACC Bylaws and Code of Ethics, in particular if there is an aspect of practice that is not covered in these standards.

In preparing these standards, the BCACC recognizes that undertaking a custody and access assessment and writing the subsequent report requires a counsellor to exercise his or her best clinical judgment. Being involved in a custody and access dispute is often a stressful situation for all concerned, and is usually the source of highly emotional disputes between the separating parents. As such, these standards should be viewed and interpreted as encouraging counsellors to employ their clinical assessment and reasoning skills in a creative but balanced, impartial and objective fashion.

The BCACC recognizes that counsellors can provide a range of services to children and families before, during and after marital breakdowns. These standards have been prepared with the understanding that the counsellor will be acting as an assessor for the purposes of preparing a custody and access report or a follow-up report. Where practical, a counsellor while acting as an

assessor should avoid multiple roles, such as also acting as a therapist, a consultant, a mediator, an arbitrator, a critic, or an advisor for the same client. It is expected that a counsellor will differentiate between these different professional roles and avoid role confusion.

The requirements of the *Personal Information Protection Act* apply to the information a counsellor in private practice collects, uses or discloses while undertaking an assessment. Therefore, a counsellor should be aware of and follow those requirements as well. The BCACC's *A Counsellor's Template for Client Personal Information Protection Policies and Procedures* provides further guidance on this legislation. Where there is a conflict between these standards and the *PIPA* requirements, the Act takes precedence over the standards.

These standards have been written with reference to the *Personal Information Protection Act*. If a counsellor who is not in private practice is relying on these standards, that counsellor or the employing agency may be required to comply with either that Act or the earlier *Freedom of Information and Protection of Privacy Act*. If the FIPPA applies, a counsellor should substitute a reference in these standards to the *PIPA* with a reference to FIPPA.

If a counsellor has been appointed by the court as a Family Justice Counsellor and is undertaking a custody and access assessment in that capacity, the counsellor should follow the policies and procedures set out in the *Family Justice Services Manual of Operation* produced by the Family Justice Services Division, Ministry of the Attorney General, rather than these standards.

The BCACC acknowledges the following documents that have been considered in preparing these practice standards for clinical counsellors (listed in alphabetical order):

- ⊙ *Family Justice Services Manual of Operation*, Family Justice Services Division, Ministry of the Attorney General (revised to December 2003);
- ⊙ *Guidelines for Child Custody Evaluations in Divorce Proceedings*, American Psychological Association (July 1994);
- ⊙ *Professional Guidelines for Psychologists: Child Custody Assessment*, College of Alberta Psychologists (revised to January 2002);
- ⊙ *Standards of Practice: Child Custody and Access Assessments*, Board of Registration for Social Workers in British Columbia (undated).

In addition, the BCACC has considered the useful commentaries provided by the BC courts in the reported cases on custody and access reports that have been prepared pursuant to the *Family Relations Act*.

GUIDING PRINCIPLES FOR REPORT WRITING

Counsellors need to hold paramount the children's best interests when writing custody and access reports. It is recognized that the children's best interests may, in turn, be affected by the parents' and families' best interests. In order to preserve best interests, counsellors should consider the following in their reports:

- Take a strengths-based perspective. Custody and access reports by necessity require concerns to be documented. However, a strengths-based perspective requires that the counsellor include only as many negative statements as is necessary to make the point.
- Preserve the dignity and privacy of the parties. Custody and access reports may require the disclosure of information that may be hurtful to significant relationships. Where possible, that is, where the integrity of the report can be preserved, counsellors should try and avoid damaging significant relationships. One means by which this could be achieved is for the counsellor to show respect for the collaterals and their relationship with the parties.
- Add constructive comments to the report. Custody and access reports comment on family dynamics and intend to provide the best parenting option for children. Comments and recommendations that counsellors make should contribute positively to the parenting plan.
- Hold a broad theoretical and practical base. Custody and access reports should carefully guard against prescribing particular points of theory that are likely to become obsolete due to the evolving nature of the scientific knowledge and professional practice to which they refer.
- Avoid making absolute predictions. Custody and access reports represent the best current knowledge of the profession and represent criteria for informing decisions that are superior to other alternatives. This limitation applies to both content and recommendations.

TERMINOLOGY

The following definitions will be used throughout these standards:

- ⊙ “Adult” means a person 19 year of age or older who is interviewed during the assessment or report-writing process.
- ⊙ “Child” means a child who is the subject of a custody and access assessment undertaken by or a report prepared by a counsellor. If the context so requires, a reference to a child in these standards applies to two or more children of a family, and also to an adopted child, a stepchild or a foster child, unless otherwise noted.
- ⊙ “Comprehensive report” means a report that documents a counsellor’s evaluation of a number of issues for both a child and the parents which results in recommendations about custody and access, but is not a limited report, and “comprehensive assessment” has a similar meaning. (See also section 19, below.) Unless otherwise noted, a reference to a “report” in these standards refers to a comprehensive report.
- ⊙ “Counsellor” means a person registered with the BC Association of Clinical Counsellors who is authorized to use the title Registered Clinical Counsellor pursuant to the Bylaws.

- ⊙ “Focused report” means a report that documents a focused, limited or clinical assessment or evaluation of the function of one member or only a few members of a family, or a report that addresses a limited number of issues, and “focused assessment” has a similar meaning. An example of a focused report would be a view of the child report, or a report that focuses on a particular issue, such as overnight visits or drug/alcohol issues. (See sections 17 and 18, below.)
- ⊙ “Parent” means an individual who is, legally responsible for parenting a child, and includes the custodial and non-custodial parent, an adoptive parent, a stepparent, legal guardian, a parent in absentia, or a caregiver, as well as a lawyer who represents a parent in a legal proceeding. If the context so requires, a reference to a parent in these standards applies to both parents of a child, unless otherwise noted.

These standards also recognize that while there are certain minimum requirements a counsellor must follow when doing an assessment or writing a report, there are also areas of practice where the counsellor has options and should exercise his or her best clinical judgment. To reflect the difference between a mandatory requirement and a suggested or recommended practice, these standards will use two different sets of verbs.

- ⊙ The use of “shall” or “must” denotes an action or event that a counsellor must perform as a mandatory or minimum requirement.
- ⊙ The use of “should” or “may” denotes an action or event that it is recommended or suggested a counsellor should perform, but is not necessarily a mandatory or minimum requirement.

PART ONE - GENERAL REQUIREMENTS

The following are the general principles that a counsellor is expected to apply or consider while undertaking a custody and access assessment, or similar assessment, and preparing a resulting report. Specific requirements and recommendations are set out in later Parts.

Best interest of the child

- 1(1) At all times during an assessment and in preparing a report, and notwithstanding who is paying the counsellor for the assessment service, a counsellor must take into consideration and act in the best interest of the child who is the subject of the assessment.⁵
- (2) If a counsellor is faced with a conflict between this principle and any other principle or standard set out in this document, the best interest of the child principle should prevail.

⁵ COMMENT: Section 24(1) of the *Family Relations Act* sets out the factors that the court must consider when deciding what would be “in the best interests of the child”. Each factor must be given emphasis according to the child's needs and circumstances: (a) the health and emotional well being of the child including any special needs for care and treatment; (b) if appropriate, the views of the child; (c) the love, affection and similar ties that exist between the child and other persons; (d) education and training for the child; (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

Counsellor's duty

2(1) In undertaking an assessment or in preparing a custody and access report, a counsellor must act in a balanced, fair and impartial fashion.

(2) The counsellor must undertake an objective assessment of the family so as to help the family or a court reach a decision regarding the custody of and access to the child or children of that family that best meets the needs of the child.

(3) When undertaking a custody and access assessment and in writing the subsequent report, a counsellor should

- (a) exercise his or her best clinical judgment, and
- (b) employ clinical assessment and reasoning skills in a creative but balanced fashion.

Informed consent (children)

3(1) The requirements of this section apply only if a counsellor has not been named by the court pursuant to section 15 of the *Family Relations Act* to undertake a custody and access assessment and prepare a report, but is doing the assessment or preparing the report at the request of one parent or both parents.

(2) Before commencing a custody and access assessment, a counsellor must obtain the informed consent of the child to participate in the assessment to the extent of that child's capacity for understanding based on the child's developmental level and ability to give or express consent.

(3) Where a counsellor cannot obtain the informed consent of a child, a counsellor must obtain the informed consent of a parent or legal guardian, or of both parents if practicable, to the child's participation in the assessment process.

(4) Appendix A contains a chart that provides a framework to help a counsellor to decide which parent(s) should consent before the counsellor interviews a child.

(5) A counsellor should obtain consent in writing, but if consent is given orally or implied, the counsellor should make a note in the file documenting that oral or implied consent was given.

Informed consent (adults)

4(1) A counsellor must obtain the informed consent of each adult to his or her participation in the assessment process.

(2) A counsellor should obtain consent in writing, but if consent is given orally or implied, the counsellor should make a note in the file documenting that oral or implied consent.

(3) A counsellor will fully describe to the parents the probable consequences of their lack of cooperation with the custody and access assessment process and also inform them that a perceived lack of cooperation can also be the content of a custody and access report.

(4) A counsellor will advise collateral participants that the information they provide will not be held confidential and they may be called to give evidence in court.

Clarifying the counsellor's role

5(1) Where a counsellor has been named by the court pursuant to section 15 of the *Family Relations Act* to prepare a report or the parents have agreed without a court order to a counsellor preparing a

custody and access report, the counsellor should refer to that order or agreement when initiating communications with the parents, the family and other persons.

(2) Because a counsellor can provide a wide range of counselling and therapeutic services to parents and their children, a counsellor who has been ordered or contracted to undertake a custody and access assessment or a similar assessment should make every effort to ensure that his or her role as an assessor is understood by those who will be involved, whether or not the counsellor has provided counselling, therapeutic or similar services to the family, either parent or a child in the past.⁶

(3) A counsellor who has been ordered or contracted to prepare a custody and access report must not while performing the assessment or preparing the report provide any counselling, therapeutic or similar services to the child or family that is the subject of that assessment or report, unless

- (a) the court so orders, or
- (b) the parents give their written informed consent to the counsellor also providing those counselling services.

(4) A counsellor who is providing counselling, therapeutic or similar services to the child or family must not while providing those services also undertake an assessment or prepare a custody and access report, or make any recommendations concerning custody and access, unless

- (a) the court so orders, or
- (b) the parents and / or their legal counsel give their written informed consent to the counsellor also providing the assessment service.⁷

(5) If a counsellor has had prior contact with a parent or the child, the counsellor must disclose the nature of that contact to the parents or the court prior to

- (a) undertaking a custody and access assessment or preparing a report, or
- (b) testifying in court, and

the counsellor must not undertake the assessment or prepare a report, or testify in court unless the parents so consent or the court so orders.

Knowledge, skills and abilities

6(1) In order to undertake a custody and access assessment or prepare a report, the counsellor should have knowledge, skills and abilities in the following subject areas:

- (a) family systems theory;
- (b) attachment theory;
- (c) theories of childhood development, including stages of development and the impact of abuse, neglect, and trauma on development;
- (d) the psychological effects of separation or divorce process on parents and children and separated siblings, including knowledge of appropriate parent or child residential schedules and visitation schedules;
- (e) the impact of cultural, spiritual, and religious background, including cultural self-concept, on separation and divorce;
- (f) the dynamics of grief or loss within the context of separation and divorce with particular emphasis on the impact on children;

⁶ COMMENT: It is recommended that the counsellor hold an “expectations meeting” with the parents before the assessment begins, as this can help the parties to understand the process they are about to be engaged in and allows the counsellor to deal with any potential dual relationship concerns.

⁷ COMMENT: A counsellor who is providing counselling, therapeutic, or similar services to a client may produce a letter of advocacy on the request of the client and / or legal counsel, but such a letter should not make recommendations regarding custody and access.

- (g) psycho-social assessments commonly used by counsellors;
 - (h) interview techniques appropriate to adults;
 - (i) interview techniques appropriate to children;
 - (j) interview techniques appropriate to collateral references;
 - (k) if using testing or screening instruments during the course of an assessment, appropriate training in the administration of and in the interpretation of those instruments.
- (2) If the circumstances warrant, a counsellor must have knowledge, skills and abilities in the following subject areas:
- (a) family reorganization after separation or divorce;
 - (b) issues of power and control and the cycle of violence, techniques for assessing the presence of family violence, and the effects of family violence on family members, particularly children;
 - (c) substance abuse and addictions;
 - (d) mental health.
- (3) If a counsellor identifies a subject listed in subsection (2) as relevant to an assessment either before or during the assessment but the counsellor does not have sufficient knowledge, skill or ability concerning that subject or cannot obtain those competencies before completing the report, the counsellor should consult with another counsellor or professional who can advise the counsellor on that subject, and that consultation should be so noted in the report.
- (4) A counsellor should have basic knowledge of the following areas:
- (a) the financial impact of separation and divorce on a family unit;
 - (b) the *Divorce Act*, Child Support Guidelines, the *Family Relations Act*, the *Child, Family and Community Service Act*, and the *Adoption Act*;
 - (c) how the family justice system deals with the issues of child and spousal support and the distribution of matrimonial property;
 - (d) international law concerning custody, access and abduction.

Contracting

- 7(1) Whether acting pursuant to a court order or at the request of the parents, a counsellor should enter into a written contract with each adult parent before beginning the assessment.
- (2) If a lawyer represents a parent, the counsellor may contract with that parent through the lawyer if the parent so consents.
- (3) If a lawyer does not represent a parent, the counsellor should contract directly with that parent.⁸
- (4) If a counsellor chooses not to establish a written contract as recommended in subsections (1) to (3), the counsellor should mail to each parent or lawyer a letter that contains information similar to that recommended for a written contract as per subsections 8(1) and (2), below.

Content of a contract

- 8(1) The counsellor should ensure that the following subjects are addressed in the contract (or letter):
- (a) an outline of the process and procedures to be followed, and the areas to be covered during the assessment process;***

⁸ COMMENT: To ensure that a parent is aware of his or her legal rights, a counsellor who deals with a parent who is not represented by a lawyer should encourage that parent to seek independent legal advice. This should also help the counsellor avoid becoming embroiled in a subsequent dispute with a disappointed parent.

- (b) scope of the assessment or general nature of the report, including whether ordered by the court or not;
 - (b) access to records;
 - (c) estimated duration of the assessment process;
 - (d) disclosure and distribution of the report;
 - (e) whether recommendations will be made in the report;
 - (f) registration and credentials of the counsellor;
 - (g) confidentiality and the exceptions (see section 13);
 - (h) consent for the release of information;
 - (i) financial arrangements for paying the counsellor (see section 9);
 - (j) dealing with any potential conflicts of interest (see section 5);
 - (k) arrangements for consulting with other professionals;
 - (l) what steps a parent may take if the parent has a question or concern regarding the professional work of the counsellor;
 - (m) the counsellor's membership with the BCACC.
- (2) In addition, the counsellor may include the following subjects in the written contract:
- (a) an assessment timetable, such as who will be interviewed, when and where;
 - (b) use of any screening or assessment tools;
 - (c) the number or nature of home visits;
 - (d) policy regarding requesting or using written collateral reports;
 - (e) settlement opportunities and the role of the counsellor if parental agreement is reached concerning custody or access;
 - (f) mutual responsibilities of the counsellor and each of the parents.
- (3) If a court orders the counsellor to prepare a custody and access report pursuant to the *Family Relations Act*, the counsellor need not itemize in a contract or letter those items that are specified in the order itself.

Financial arrangements

- 9(1) The counsellor must advise the parents concerning the financial arrangements with respect to the counsellor's statement of account, including:
- (a) the counsellor's fees and disbursements for undertaking the assessment and preparing the report, including an estimate of the total costs and the possibility of any additional or unanticipated fees or disbursements that may occur;
 - (b) any taxes that may be applied to the fees or disbursements;
 - (c) the nature of the services that the fees cover;
 - (d) who will pay the counsellor's statement of account;
 - (e) when the statement of account will be paid;
 - (f) what options the counsellor may pursue for obtaining payment on an unpaid statement of account.
- (2) If the parents will not share paying counsellor's statement of account equally, the counsellor should specify in the contract the allocation of the costs between the parents.
- (3) A counsellor should document the financial arrangements in the contract recommended in subsection 7(1) to (3) or the letter referred to in subsection 7(4), above.

Higher than anticipated costs

10(1) If the total costs will exceed those estimated in the contract, the counsellor must inform the clients of this as soon as practical and explain the reasons for the additional fees in advance.

(2) If practical, the counsellor should negotiate a new or further arrangement with the parents for the payment of the additional costs.

PART TWO - UNDERTAKING AN ASSESSMENT

Pre-assessment meeting

11. If a counsellor holds a pre-assessment information meeting during the orientation process with one parent, the counsellor must offer a similar meeting to the other parent.

Consulting the parents re: scope

12. The counsellor must determine the scope of a custody and access assessment in conjunction with the parents, taking into consideration any directives given in a court order or a referral question.

Confidentiality and exceptions

13(1) At the commencement of an interview, the counsellor must advise each person to be interviewed that personal information will be collected, used, disclosed and given security in accordance with the provisions of the *Personal Information Protection Act*.

(2) The counsellor must also advise each person of the following:

(a) the information that they provide during the assessment is not privileged and may become part of the public record;

(b) they may be required to provide corroborative evidence in Court under oath.

(c) if as a result of the information gathered the counsellor has reasonable grounds to believe that a child is in need protection, the counsellor is required by law to file a report with the Ministry of Children and Family Development (see section 32).

Gathering information

14(1) A counsellor must

(a) make every effort during an assessment to obtain and consider all relevant information from the best sources available, and

(b) conduct all interviews necessary for the assessment.

(2) The counsellor should review all potentially relevant reports concerning the child or parents, such as those produced by schools, health care providers, child care providers, child care protection agencies, or health or social service organizations or institutions.

(3) Notwithstanding subsection (1), a counsellor may have

(a) a counselling student undertake the information gathering tasks, so long as the counsellor supervises that student, and

(b) an assistant gather factual information such as school and medical records, as authorized and directed by the counsellor.

(4) If someone other than the counsellor had a role in gathering information and preparing the report, the counsellor must so advise the parents and clearly explain that person's role and the form of supervision exercised by the counsellor, and do so either in a contract with or a letter to parties, or in the final report.

(5) A counsellor should inform all participants, including collateral references, that

(a) the information that they provide during the assessment is not privileged and may become part of the public record;

(b) they may be required to provide corroborative evidence in Court under oath.

(c) if as a result of the information gathered the counsellor has reasonable grounds to believe that a child is in need protection, the counsellor is required by law to file a report with the Ministry of Children and Family Development (see section 32).

Information provided by parents

15(1) To ensure the results of an assessment are viewed by the parents as balanced, fair and impartial, the counsellor should make every effort to request information of the same kind and with the same degree of detail from both parents, if time and circumstances so permit.

(2) A counsellor meets the requirement of subsection (1) if

(a) the counsellor requests a parent to provide information but that parent chooses not to provide the requested information, or

(b) the parents' lawyers provide a joint letter to the counsellor setting out agreed facts and information.

(3) If a counsellor can not meet the requirements of subsection 15(1), then the counsellor should include in the body of the report a written statement detailing why the requirement was not met.

Recording interviews

16(1) A parent has the right to record that parent's interview with the counsellor.

(2) If a parent exercises this right, the counsellor may also record the interview.

PART THREE - ASSESSMENT AND ISSUES

Focused assessment

17(1) If the counsellor is ordered by the court or requested by one or both parents to undertake a focused assessment or provide a focused or limited report, the counsellor should advise the parent(s), verbally or in the written contract or report

(a) that the counsellor is not undertaking a comprehensive custody and access assessment or preparing a comprehensive report, and

(b) of the specific limits or nature of the focused report.

(2) If a counsellor advises a parent verbally concerning the focused assessment or report, the counsellor should make a note in the file to document that advice.

(3) When the court orders or the parents agree that a specific issue such as access, overnight visits or drug and alcohol issues be addressed in a report, the counsellor must determine the appropriate assessment process to properly address that issue in the focused report.

Views of the child assessment

18(1) When the court orders a views of the child report, the counsellor must conduct, where possible, separate interviews with the child and, unless the court specifically directs otherwise, conduct a separate interview with each parent.

(2) Where possible, the counsellor should conduct interviews with the children after they have spent time with each parent or party to the dispute.

(3) When preparing a view of the child report, the counsellor

(a) should make it clear that what is being reported are the views of the child in relation to the subject matter at the date and time the counsellor interviewed the child, and

(b) must not make any recommendation regarding custody and access.

(4) Appendix A contains a chart that provides a framework to help a counsellor to decide which parent(s) should consent before the counsellor interviews a child to obtain his or her views.

Comprehensive custody and access assessment

19. The primary focus of a comprehensive custody and access assessment is on:

(a) the needs, interests, and wishes of each child;

(b) the parenting ability and willingness of each parent including

(i) any current partners or other significant caregivers, and

(ii) their ability to meet both general developmental needs and any special needs of the children;

(c) evaluating the relationship between each adult and child.

General principles

20(1) In undertaking a custody and access assessment and preparing the resulting report, a counsellor should take into consideration the broader social context of the child and family, as well as their community, and the broad array of factors that can influence that social context.

(2) The counsellor should assess child custody and access from social, emotional, developmental, relationship and cultural perspectives, which should be reflected in any report the counsellor prepares.

Interview or observation of the child

21(1) In doing a custody and access assessment, the counsellor must interview each child independently from the parents, current partners and other siblings to give the child an opportunity to express views about the family situation.

(2) The counsellor need not interview each child individually if that child is an infant or toddler.

(3) If a counsellor decides that it is not in the child's best interests to interview the child, the counsellor should then observe the child with the parents and siblings.

(4) If a counsellor decides that it is not in the child's best interests to interview or observe the child, the counsellor must clearly state the reasons for that decision in the report.

Interview or observation of the children of the family

22(1) This section applies if there are two or more children in the family who may be living with the child, or separately from but have regular contact with the child, including any adopted children, stepchildren, or foster children who are not the subject of the assessment.

(2) The counsellor should interview or observe the children of the family separately and together without the parents to assess the sibling relationship.

(3) If a counsellor decides that it is not in a child's or the children's best interests to interview or observe them separately or together, the counsellor must clearly state the reasons for that decision in the report.

Interview or observation at home

23(1) The counsellor should observe the child or children in the care of each of the parents, and on at least one occasion in their respective homes and, if practical, in any other home being considered for child.

(2) If a counsellor decides that it is not in the child's best interests to interview or observe the child at home, the counsellor must clearly state the reasons for that decision in the report.

Child assessment

24(1) The counsellor must assess the needs of each child independently, including ascertaining each child's level of maturity, interests, aptitude, special needs, educational needs, and routines

(2) If it is not possible to assess a child as required under subsection (1), the counsellor must clearly state the reasons for that decision in the report.

(3) When interviewing a child, the counsellor should assess and, if appropriate, discuss with the child the following issues:

(a) the personality and character of the child;

(b) the health and emotional well-being of the child, including any special needs for care and treatment;

(c) the physical, psychological, social and economic needs of the child;

(d) education and training for the child;

(e) where appropriate, the views of the child;

(f) all emotional bonds that exist between the child and each person to whom the child's custody may be entrusted, each person to whom access to the child may be granted, and, where appropriate, each sibling of the child;

(g) the role of extended family and other significant persons in the child's life;

(h) the child's cultural and religious heritage, and current traditions or practices if they are substantially different from the past;

(i) the length of time each child has lived in a stable home environment;

(j) each parent's home situation in relation to the child's needs;

(k) the effect upon the child of any disruption of the child's sense of continuity.

(4) A counsellor should avoid asking a child directly to choose which parent they would prefer to live with, but in some circumstances it may be appropriate for the counsellor to ask older children how they would feel if the court made a custody or access order that favoured one parent over the other.

Parent and partner assessment

25(1) The counsellor must

- (a) interview and assess each parent individually;
- (b) interview and assess each current partner of a parent individually;
- (a) observe each parent interact with his or her current partner in order to assess their relationship with each other;
- (c) observe each parent and current partner interact with the child, separately and together, in order to assess their relationships with the child;
- (d) spend equal amounts of time with each parent;
- (e) take the same steps in gathering information from each parent.

(2) The counsellor should interview all other adults living with the child, separately and together, in order to assess their relationships with each other and the child.

(3) If it is not possible to interview or assess a parent, current partner or other adults as required under subsections (1) and (2), the counsellor must explain why in the written report.

(4) When interviewing a parent, the counsellor should assess and, where applicable, discuss the following issues:

- (a) relationships between each parent and the child or other children;
- (b) personal and marital histories of each parent;
- (c) the parents' relationship with their own parents, and their parents' relationships;
- (d) knowledge, skills and attitudes of each parent toward parenting;
- (e) the permanence and stability of the family unit of each parent;
- (f) presence or history of family violence;
- (g) mental health or addiction concerns;
- (h) presence or history of relevant criminal complaints or convictions;
- (i) resources in support of any special needs of the child;
- (j) parenting arrangements;
- (k) attitudes about and relationships within the extended family and the community;
- (l) ability and willingness to co-operate with and support a relationship between the child and the other parent;
- (m) capacity to resolve difficulties in the child's best interest;
- (n) strengths and challenges of the individual as a parent;
- (o) the parents' and child's support systems;
- (p) the wishes of the parent;
- (q) the parent's capacity to exercise the rights and responsibilities associated with guardianship, custody and access.

Inter-parental assessment

26. A counsellor should assess and, if appropriate, discuss with the parents the following inter-parental factors:

- (a) the effect that designating custody or primary care of the child to one parent would likely have on the other parent's ability to exercise reasonable access to the child;
- (b) the degree of support given by each parent figure to a healthy and ongoing relationship of the child with the other parent figures;
- (c) the degree of inter-parental conflict.

Situational factors

27. A counsellor should assess and, if appropriate, discuss the following situational factors:

- (a) the relationship by blood or through an adoption order between the child and each parent;
- (b) the presence within the family of child neglect, abuse, domestic violence, substance abuse or other child protection concerns;
- (c) mobility issues.

Collateral sources of information

28 (1) The counsellor may interview persons as collateral sources of information, including people who the parents or the child view as significant, such as grandparents, other relatives who are closely involved with the family, teachers, physicians and other health care professionals.

(2) Before interviewing a collateral source of information, the counsellor must

- (a) ask each parent to recommend persons, who know about a parent's parenting capacity and the parent/child relationship to be references,
- (b) obtain the parent's consent, preferably in writing, to have a reference provide the counsellor with personal information about the parent, the child or the family,
- (c) ask the parents to tell their references that they may be contacted by the counsellor, and
- (d) advise the parent that a reference will be contacted if the counsellor decides it would be beneficial to do so.

(3) The counsellor must advise each reference that

- (a) they may be subpoenaed to a hearing to give evidence on the information or observations they have provided to the counsellor, and
- (b) pursuant to the *Personal Information Protection Act* the information or observations they have provided to the counsellor may, on the written request of a parent or a reference, be released to that requestor.

Other sources of information

29(1) A counsellor may contact any other person who may be a source of personal information about the parent, the child or the family, but as a courtesy should do so with the parent's consent to provide the counsellor with that information.

(2) If a parent refuses to consent to the counsellor contacting others persons to obtain personal information about the parent, the child or the family, the counsellor may nonetheless contact those persons without the parent's consent and request the information.

(3) If a person who is a source of personal information about the parent, the child or the family declines to provide the information so requested, the counsellor must note that person's decision in the final report.

Consulting and cooperating with other professionals

30(1) A counsellor should cooperate and share information with other professionals who are qualified to work in the area of child custody and access to the extent that is authorized by the family, a court or the law.

- (2) A counsellor may consult other professionals with specialized training and expertise in areas such as family violence, addictions or mental health.
- (3) During a consultation with another professional, the counsellor may disclose otherwise confidential information about a child or parent to the extent such disclosure is permitted in the written contract or as may be required for the purpose of the consultation.

Violence, power and control issues

31(1) The counsellor must screen each parent to identify possible violence, power imbalances and control issues in the following areas:

- (a) their relationship with each other;
- (b) the effect of violence or power imbalances on their child;
- (c) any acts of physical or emotional violence towards a child.

(2) The counsellor must clearly state in the final report that the parents have been screened for violence, power and control issues, and the outcome of the screening.

(3) If violence is a factor in the parents' relationship, the counsellor must present the history of that violence in the report, and in the context of parenting capabilities and impact on the child.

Child at risk

32(1) If during the course of doing an assessment a counsellor has a reason to believe that a child under 19 years of age has been or is likely to be neglected, physically harmed, sexually abused or sexually exploited or needs protection, the counsellor must report that belief to the Ministry of Children and Family Development or the police, as required by section 14 of the *Child, Family and Community Service Act*.

(2) If a counsellor makes a report pursuant to subsection (1), the counsellor should consult with child protection authorities in deciding whether or not to stop the assessment process until all issues regarding the apparent risk of harm to the child have been resolved.

(3) If the counsellor was appointed by the court under the *Family Relations Act*, and the Ministry of Children and Family Development or the police investigation concludes that there is reason to proceed with a child protection action or criminal charges, the counsellor must so inform the appointing judge.

(4) In the letter to the judge, the counsellor must indicate that because the child may need protection from the alleged offender, the report will not proceed until the protection or criminal hearing process has concluded.

(5) If the investigation yields inconclusive or unsubstantiated findings, the counsellor must continue the assessment but acknowledge in the final report that the Ministry of Children and Family Development or the police investigation was inconclusive.

Criminal record check

33(1) Canadian Police Information Centre (CPIC) records are not directly available to counsellors for the purpose of assisting with a custody and access report.

- (2) If a counsellor believes a criminal record check would provide important information for the assessment, the counsellor may ask the parent in question to obtain a criminal record check and provide the result to the counsellor within a prescribed but reasonable period of time.
- (3) If the counsellor does not receive the record from the parent by the prescribed deadline, that fact must be stated in the final report.

Community and environment

34(1) The counsellor must consider the child's community as part of appropriate custody and access arrangements, including:

- (a) the safety of the immediate home environment;
- (b) day care or after-school care arrangements;
- (c) religious, cultural and recreational supports;
- (d) health and counselling resources.

(2) The counsellor should consider environmental factors ranging from economic to community support.

Maintaining records

35(1) Because the notes and records a counsellor prepares during a custody and access assessment are subject to review by the parties on request or during a legal proceeding, a counsellor should ensure that the information and records obtained during an assessment are well maintained and reflect the process of the assessment.

(2) A counsellor should create a separate record of each meeting and contact with the parents and all other sources of information, and note the location, date, length of meeting, individuals in attendance, and substance of the meeting.

(3) In preparing notes or records, the counsellor must distinguish between the first hand information provided or observed and the counsellor's subsequent reflections on that information.

(4) A counsellor should ensure his or her notes are concise but also provide enough detail to ensure accurate recall.

PART FOUR - WRITING THE REPORT

Presentation of information

36(1) When preparing a custody and access report, a counsellor must

- (a) present only information that is based on direct observation;***
- (b) state if the view of another person is being relied on;
- (c) disclose any bias the counsellor may hold against either parent in relation to the custody and access of the child;
- (d) ensure the report
 - (i) is clearly written,
 - (ii) avoids the use of legal or psychological jargon,
 - (iii) conveys an attitude of respect for all of the individuals involved,
 - (iv) is objective and based on facts,
 - (v) is balanced and does not engage in linguistic advocacy, and

- (vi) avoids making predictions but makes comments on current status.
- (2) If the counsellor presents information that is not based on direct observation but on the observations of another person, the counsellor should be prepared to identify who made the observation and its circumstances.
- (3) Where possible, that is, where the integrity of the report can be preserved, counsellors should try and avoid damaging significant relationships.
- (4) A counsellor should cross-check all statements made in a report, and must be able to substantiate each reported statement under cross-examination.
- (5) A counsellor must not introduce new factual information in the assessment and recommendation section of the report.

Comprehensive report

- 37(1) A counsellor must ensure that the following topics are addressed in a comprehensive report:
- (a) the counsellor's academic qualifications, relevant training and experience, and professional registration;
 - (b) who ordered or requested the assessment;
 - (c) reasons for the assessment;
 - (d) sources of information considered during the assessment;
 - (e) the assessment process, including identifying the names of those interviewed, their relationship to the parties or child.
- (2) A counsellor must ensure that the following information is summarized in a comprehensive report:
- (a) personal, family, and marital histories;
 - (b) previous, present, and desired parenting or care-giving arrangements;
 - (c) assessment of each child and each parent or caregiver, including their strengths and weaknesses;
 - (d) issues of concern and how they have been addressed;
 - (e) factors such as family violence, addictions, and mental health that might affect the safety of the children or negatively impact the ability to parent, and how these have been addressed;
 - (f) procedures and assessment tools used;
 - (g) an assessment of the relationships among parents and children and among the adults and the basis for this assessment.
- (3) A counsellor must ensure that the report identifies any area of agreement between the parents.
- (4) If the report contains recommendations concerning custody or access, the counsellor must ensure that each recommendation meets the requirements of section 41.
- (5) Appendix B contains a recommended template for a report.

Analysis

38. The counsellor must:
- (a) identify any assumptions made and disclose any biases in analyzing the gathered information;
 - (b) review impartially and consider all data collected in formulating the analysis;
 - (c) ***explicitly state or disclose the data used in reaching a conclusion or making a recommendation.***

Reporting allegations

39(1) A counsellor should not provide an opinion in the report about the veracity of any outstanding criminal allegations against any parent to the assessment.

(2) A counsellor should present in the report any unproven allegation of sexual, emotional, or physical abuse only as a hypothesis relating to the issue of parenting capacity.

Domestic violence

40(1) In cases in which domestic violence is alleged, or a pattern of domestic violence exists, the counsellor must consider the following in any resulting custody and access recommendations:

- (a) risks to the safety and well-being of the child;
- (b) effects of exposure to domestic violence on the child;
- (c) safety of the abused parent (or caregiver) including a risk assessment or safety plan;
- (d) available supports to the family.

(2) If a risk assessment report or safety plan has been prepared pursuant to the *Child, Family and Community Service Act*, the counsellor must consider and refer to that report or plan, as well as its findings or recommendations.

Recommendations

41(1) Depending on the terms of the court order or parental agreement, a counsellor may make a recommendation concerning custody and access, including the nature, duration, and intensity of parent-child contact, and whether contact will be in person, by telephone or written.

(2) If a counsellor intends to make a recommendation to the court, the counsellor

(a) must consider the factors listed in section 24 of the Family Relations Act, being

- (i) the health and emotional well being of the child including any special needs for care and treatment,
- (ii) if appropriate, the views of the child,
- (iii) the love, affection and similar ties that exist between the child and other persons,
- (iv) education and training for the child,
- (v) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise these rights and duties adequately, and

(b) should acknowledge that the Court has the sole jurisdiction to make the final decision under that section of the Act.

(3) If a counsellor makes a recommendation, it must be

(a) supported by reasons that are based in the evidence collected during the assessment, and

(b) specific, clear, and practical, and

(c) tentative, rather than absolute, regarding predictions and outcomes.

(4) If the counsellor evaluates the parenting capacity of only one parent, the counsellor cannot make a recommendation favouring custody or access of one parent over another.

(5) If the counsellor evaluates only the counselling needs of a child, the counsellor cannot make a recommendation regarding custody of or access to that child.

(6) If no recommendation is made, the counsellor must explain why in the report.

(7) When only one parent is assessed (e.g. out-of-province referral), the counsellor must not make a recommendation unless it is made jointly with a person who is assessing the other parent.

Reviewing the recommendations with the parents

42(1) Before finalizing the report and if the counsellor determines it would be appropriate and useful to do so, the counsellor may discuss the progress of the assessment, recommendations and reasons for them with the parents separately and, if requested, with their lawyers.

(2) The counsellor may use the parents' response to the proposed recommendations as a source of additional information for the final report.

PART FIVE - DISTRIBUTION OF THE REPORT

Filing the report

43(1) When a counsellor has been ordered by the courts to prepare a report pursuant to section 15 of the *Family Relations Act*, the counsellor must follow the reporting requirements of that provision or as communicated to the counsellor by the court or the lawyers.

(2) Where a counsellor has prepared a report at the request of the parents, the counsellor must follow the arrangement for distribution of the report that the parents have established or has been communicated to the counsellor in writing.

(3) If no direction is given in accordance with subsection (2), the counsellor should distribute the report to the parents at the same time.

(4) Notwithstanding subsections (2) and (3), the counsellor may send the report to the parents' lawyers, but if one parent is not represented by a lawyer, the counsellor may send the report to that parent at the same time it is sent to the other parent's lawyer.

Delayed reporting

44. If a court date has been set for a hearing and the counsellor cannot deliver the report 30 days before that date, the counsellor must so inform the court (if the assessment is court-ordered), the parents and the lawyers in writing, stating the reasons for the delay and providing a new estimated completion date.

Letter to unrepresented parents

45. The counsellor must send a parent who is not represented by a lawyer a letter advising them of

- (a) the opportunity to clarify the report content,
- (b) the right to ask the counsellor to be present for examination at a court hearing, and
- (c) the right to access information upon written request pursuant to the *Personal Information Protection Act*.

Post-distribution meetings

46(1) After the distribution of the report, a counsellor may meet with the parents separately or jointly and do one or more of the following:

- (a) discuss the results of the assessment;
- (b) provide an explanation of the process and a rationale for each finding or recommendation;
- (c) allow the parents to ask questions;
- (d) invite the parents to cooperate in an agreement and develop a plan based on the assessment findings;
- (e) discuss the implementation of the plan.

(2) If a counsellor agrees to meet or meets with one parent for the purposes listed in subsection (1), the counsellor must extend an invitation to the other parent for a similar meeting.

(3) As part of a discussion of the implementation of the plan under clause(1)(e), the counsellor may discuss with the parents the need for subsequent reviews of the plan at regular intervals for a predetermined period of time.

Disclosure of notes

47(1) In the event that a parent or a reference requests that the counsellor's notes and background material be disclosed to them, the counsellor must advise the requestor orally or in writing that:

(a) notes may not be a verbatim record of the interview or observation;

(b) notes are taken to assist the counsellor in recollecting the interview for the purpose of giving evidence at a court hearing, and that it is preferable to have the counsellor address the notes in court at the time of hearing of the custody or access matter;

(c) due to the complex and sensitive nature of the information gathered, notes and background materials are not disclosed in response to an informal request, but that a formal written request for disclosure can be made under the *Personal Information Protection Act*.

(2) The counsellor must ensure that information contained within the report notes will be evaluated and disclosed in accordance with the *Personal Information Protection Act*.

Appendix A – Framework for obtaining parental consent

The following provides a framework to help a counsellor ascertain which parent(s)' permission the counsellor requires before the counsellor interviews children in a custody or access dispute.

The parents' legal status re: the child to be interviewed	The counsellor should seek permission needed from...
Parent A has sole custody and sole guardianship	Parent A: If only one parent has been granted custody and guardianship, then only that parent can give consent.
Parent A has sole custody and Parent B has sole guardianship	Parent A: While this scenario is probably not common, the custodial parent alone would have the legal authority to give consent.
Parents share joint custody; Parent A has sole guardianship	Either parent: This scenario would probably never occur. If the parents have joint custody, it is highly unlikely that the court would award only one parent sole guardianship. As a matter of law either of the custodial parent can give consent, but as a matter of practice a counsellor should try to obtain the consent of both parents.
Parent A has sole custody; parents share joint guardianship	Parent A: In general, the parents are required to consult with each other about important matters pertaining to the child, but in the event of a dispute, the custodial parent A will have the final say.
Parents share joint custody and joint guardianship	Either parent: The bundle of rights and obligations remain shared as between the parents. As a matter of law either custodial parent can give consent, but as a matter of practice a counsellor should try to get the consent of both parents.

COMMENT: If an older child is being interviewed by the counsellor, that child may be able to give consent without the need for parental consent. In such cases, the legal status of the parents' relationship to that child would not be a determining factor. The counsellor should follow the guidance for obtaining the consent of a mature child as outlined in Bryce, G. "Obtaining Consent From Children", 12:2 *Insights* at page 11.

Appendix B - Recommended Template for a Custody and Access Report

Title page

In the Provincial/Supreme Court of British Columbia (state city)

Court File #:

Between Applicant/Plaintiff:

And: Respondent/Defendant:

Section 15 *Family Relations Act*

Custody and Access Assessment Report

Authority

Pursuant to the Order made by the Honourable Judge/Master/ Honourable Justice _____ filed on the _____ day of _____ 20__, with respect to the custody and/or access of the following child or children:

Name: Born:

Name: Born:

Name: Born:

Counsel for the Applicant/Plaintiff:

Counsel for the Respondent/Defendant:

Person directed to carry out Investigation:

Date report completed:

Persons interviewed

That, in order to carry out this investigation, I have interviewed (indicate by telephone or in person interview) the following persons (state relationship to child or children and/or clients) and have reviewed the stated documents (list specific reports).

(sample)

Name/Relationship: Telephone/In Person

Name/Profession or Title: Telephone/In Person

Name/Profession or Title: Type of Report

Introduction

This section may include a brief court history including dates of appearances and any court orders, include the date the report was ordered and by whom as well as direction given by the court in regard to the nature or focus of the investigation.

Background

This section may include:

- Brief history of marital relationship including screening for relationship violence and outcome
- Present and past parenting arrangements
- Brief paragraph on each parents' position for future parenting arrangements

The *Family Relations Act* Section 24 Criteria Considered

A. Health and Emotional Well Being

This section may include an assessment on physical, mental and emotional health, including adjustment to parents' separation.

B. Views of the Child or Children

This section may include the child or children's views of the parenting plan if appropriate.

C. Love Affection and Similar Ties

This section may include an assessment on the child or children's relationship with each parent, siblings, significant others such as grandparents, uncles, aunts etc.

D. Education and Training

This section may include the child or children's reports from school or day care. Address any special needs if applicable.

E. Parental Capacity

This section may include an assessment of each parents' ability to provide for the child or children in relationship to the factors as set out above (A, B, C, D,). Assessment of the parents' plan for self and child or children, description of the parent's relationship with the other parent in relation to the child or children

Evaluation and Recommendation

This section should include an assessment of information already presented and a recommended parenting plan:

- Summary of the child or children's needs based on Section 24 criteria;
- Assessment of the family situation and recommendation based on best interest of the child or children;
- Recommendation should be clearly outlined based on the counsellor's assessment. If a recommendation is not made, the reason(s) why must be clearly stated in the report.

Child Custody and Access Assessment and Reports
Approved by the Board of Directors Oct 22, 2005

GUIDELINES

GUIDELINE FOR ETHICAL DECISION MAKING

Decision making in all areas of practice requires a consideration of the ethical principles. The BC Association of Clinical Counsellors believes that all practitioners need to continually:

1. Be aware of the values governing their practice, including those required in the Code of Ethical Conduct and Practice Standards;
2. Be aware of personal values, the values of others, and the implications for their professional practice.
3. Assess how their personal and professional values interface in their professional practice.

In situations where the ethical solution appears to be ambiguous, or where values or interests conflict, the use of an ethical decision making process such as the one outlined below is appropriate. Sometimes a resolution may be reached quickly, whereas at other times the complexity of issues may require considerable deliberation and consultation.

The BCACC strongly encourages RCCs to seek professional consultation and emotional support during the process of making ethically difficult decisions.

An Ethical Decision Making Process

WHO is involved? Identify:

- All the individuals and groups affected by the decision.
 - The rights and interests of these individuals and groups.
 - Any relevant characteristics of these individuals and groups.
-

What is (are) the ethically relevant ISSUE(s)?

- Seek additional information as needed.
 - In what context or circumstances did the issue arise?
 - What legal, community, or societal standards are engaged?
 - Are there applicable Ethics and Practice Standards, or Guidelines?
 - Is there conflict between different values or the interests of different parties?
-

SELF AWARENESS. Identify your own:

- Personal biases;
- Life stressors; and
- Personal interests;

That could affect the decision making process and the final decision.

ALTERNATIVES

- Develop alternative courses of action. Consult with others as appropriate, remembering that sometimes
-

this may include the parties directly involved. It may also include interdisciplinary team members.

CONSIDER...

- The risks and benefits of each alternative on the individuals and groups involved, in the short and long terms, and on an ongoing basis.
 - The values underlying each alternative.
-

CHOOSE

A course of action, individually or collectively as appropriate in the situation. As part of this step, RCCs should take steps to address and acknowledge their feelings and intuitions about the issue. These steps could include:

- Checking in with and identifying the source of any internal uneasiness;
 - Taking time to consider (“sleeping on it”);
 - Finding quiet space to allow emotional material to become fully in awareness and to be processed;
 - Reframing the situation in time – how does one want to remember having acted? What will the significance of the matter be in six months, a year, five years?
 - Seeking feedback from several different perspectives if possible in the circumstances and if it can be done while also maintaining the various privacy interests involved;
 - Asking for help;
 - Accessing one’s emotional supports and resources. What is needed to stay centered and grounded in this situation?
-

COMMIT and take action.

Individually:

Take all appropriate and necessary steps to ensure that the ethical issue is dealt with to the best of your ability.

As a group or organization:

Where the issue is a collective one the course of action chosen will often also require collective action. In this case one person should be given the overall responsibility for implementation.

EVALUATE the results.

Take RESPONSIBILITY

- For the consequences of the action.
 - To correct so far as possible any negative consequences of the action.
 - To re-engage in the decision making process if the issue remains unresolved.
-

Prevent FUTURE OCCURRENCES

- Evaluate the organizational systems in which the issue arose in order to identify and remedy, if possible, the circumstances that may facilitate and reward unethical practices, e.g., poor communications, inadequate resources, restrictive policies, and arbitrary procedures.
 - Evaluate which, if any, of your own behaviours or circumstances may have contributed to the development of the ethical issue and take appropriate steps to address these.
-

GUIDELINES FOR ETHICS in SUPERVISION & TEACHING

A common theme in discussions of this topic is the recognition that within the counselling field, the goals of supervision/teaching can overlap with therapeutic goals. Another issue implicit in teaching/supervision is the power differential. This creates a unique set of ethical issues for supervisors and, to a lesser degree, for teachers⁽¹⁾. These issues can be roughly divided into five categories:

COMPETENCE

- ⇒ supervisors have demonstrated competence in supervision as well as clinical competence in areas of instruction or supervision.
- ⇒ supervisors need a clear understanding of the legal and ethical implications of a supervisory role with both students and clients.
- ⇒ supervisors benefit from supervision of their supervision to assist them in monitoring the ethical issues.
- ⇒ self knowledge and managing countertransference are important skills for counsellors. Students need to demonstrate to supervisors that they are competent to manage these issues. Independent personal counselling may be the most ethical means to satisfy a supervisor's need to evaluate student competence while protecting student confidentiality.

CONFLICT OF INTEREST

- ⇒ the primary client is the client and not the student although both have interests which need to be balanced.
- ⇒ when a supervisor has multiple roles with a student there can be built-in dual relationships to manage. This needs to be avoided or minimized wherever possible. Multiple evaluative roles are especially undesirable and potentially most stressful.
- ⇒ Boundaries need to be clearly defined and maintained. This needs to be monitored closely as students progress to more advanced stages which more closely approximate a peer relationship. Social contact is likely to compromise the supervision relationship. Sexual relationships with students are not acceptable.
- ⇒ Several articles cite the tendency for graduates to repeat unethical practices which were role modelled by teachers or supervisors during their training. In the interests of the public good, a supervisor is obligated to promote ethical behaviour and skill levels which meet acceptable standards for the field.
- ⇒ Both supervisor and student need to represent their competencies accurately to the client.
- ⇒ Clients need to be informed of the qualifications and identity of the supervisor.

STUDENT INTERESTS

- ⇒ managing potential conflicts of interest need to be clear and discussed with student in advance.
- ⇒ supervisors need to be sensitive to personal or student issues with any student. Option of referral to an alternate supervisor may be warranted in some situations.
- ⇒ supervision must be clearly distinguished from personal counselling – students' needs are to be referred for personal issues which are not directly associated with the counselling skills under

supervision. This is based on the risk of a dual relationship impairing a supervisor's ability to objectively evaluate a student in a dual role and on the recognition that the power differential has the potential to be experienced as coercion for a student who is offered personal counselling by a supervisor.

- ⇒ disclosure of personal information needs to be restricted to information only as it applies to skills for counselling a client.
- ⇒ Confidentiality and performance evaluation information need to be carefully balanced.
- ⇒ A protocol for complaint resolution needs to be clearly defined and students need to be encouraged to raise questions, challenges and/or doubts in order to manage the perceived power differential in a manner which protects student interests.

STUDENT ETHICS

- ⇒ students are expected to meet ethical standards of conduct of the field in which they are training.
- ⇒ students need to receive realistic expectations of their developing competence.
- ⇒ students need to receive clear expectations of the level and nature of competency as this relates to the program and course content.

INFORMED CONSENT

- ⇒ a written supervision contract is recommended to clarify expectations - including format for case presentation, method of evaluation, recordkeeping, and relevant time frames.

(1) *For language simplicity the term student will be used to mean student, supervisee or trainee.*

Suggested reading:

Ethical Issues of Supervision. Patrick Sherry, *The Counselling Psychologist*. Oct 91, Vol. 19, No.4.

Ethical Supervision. In *Dimensions of Psychotherapy Supervision: Maps and Means*. Russell Haber, WW Norton, 1996.

Boundary Issues in Supervision & Consultation. In *ACAeNews*, Counsellor Education & Supervision/The Student Center. Vol. 2, Issue 6, Part 1 & Issue 8, Part 2.

The Blueprint for Supervision Contracts. In *The Complete Systemic Supervisor: Context, Philosophy, and Pragmatics*. Thomas Todd and Cheryl Storm, Allyn and Bacon, 1997.

Supervision and Consultation for Trauma Therapies. In *Trauma and the Therapist: Countertransference and Vicarious Trauma in Psychotherapy with Incest Survivors*. Laurie Anne Perlman and Karen Saakvitne, WW Norton, 1995.

The Reasonably Complete Systemic Supervisor Resource Guide. Cheryl Storm and Thomas Todd, eds. Allyn and Bacon, 1997.

Guidelines For Ethics In Supervision & Teaching
November 1999

COUNSELLING via TELEPHONE or COMPUTER

A policy statement from the BCACC Ethics and Practice Standards Committee

INTRODUCTION

The practice of using the telephone to deliver services to clients is not new to the helping professions. Client or patient contact via phone occurs in many situations. Normally it is understood by counsellor and client that non face-to-face methods of contact are unusual and are to be minimized in a clinical counselling relationship. With regard to ongoing therapy, our profession has traditionally been less than supportive of anything other than conventional direct human contact.

This Committee is not concerned about telephone or computer contacts with clients that involve simple information exchange, referral services, short-term crisis intervention or brief check-ins. Many resources - such as crisis centres, government web pages, and helplines - meet comparable needs admirably and at no client cost. There may also be rare circumstances or locations where telephone contact may be the only practical way to provide ongoing client services in the absence of viable alternatives.

What concerns this Committee more - in the emerging areas of practice known as *telephone counselling* and *Internet counselling* - is that these options are now being offered in a way which invites the expectation of more formal and personal services to potential clients. There is a point at which a clinical line is crossed in terms of client/counsellor interactions. This raises the following issues.

ISSUES associated with TELEPHONE and INTERNET COUNSELLING

The BCACC Ethical Practice Standards and Bylaws apply to this area, as to all other areas of counselling practice. Therefore, delivery of services via electronic equipment by BCACC members would have to meet the standards which BCACC has adopted and also uphold the Bylaws of BCACC. This would in practice be difficult to demonstrate given issues such as the following:

- a) Liability insurance coverage.
- b) Determining informed consent.
- c) Services to minors.
- d) Confidentiality in factors such as credit card billing, cellular telephones, limitations of Internet transmission, encryption technology.
- e) Practicing within one's area of licensure or in other jurisdictions.
- f) Fair fee for services which tend to be freely available elsewhere or comparable service expectations at lower cost in direct contact settings.
- g) Appropriate client assessment.
- h) Counsellor competence for this area of practice.
- i) Client recourse in case of negative experiences or ethical complaints.

CONCLUSION

The BCACC Ethical Practice Standards state that

Counsellors who are engaged in a work setting that calls for any variation from these standards make the variation known and either arrange for an ethically appropriate compromise or are prepared to seek other employment.

With our current knowledge, and lack of research in the field, it is this Committee's opinion that any BCACC member undertaking these methods exclusively as a formal, ongoing basis of practice would find this ethically difficult to defend under close scrutiny. Therefore, this Committee suggests that BCACC members avoid the practice of offering ongoing services via telephone or the Internet. BCACC members who see themselves as meeting criteria for "rare" circumstances and the absence of viable alternatives, are invited to consult with members of this Committee in order to explore the ethical implications of their current or anticipated methods of delivering clinical counselling services.*

**See Appendix I for questions a counsellor could be asked to address satisfactorily in this exploration.*

RECOMMENDATIONS

(i)... that this Board review this Committee's conclusions and discuss adoption of a policy statement on Telephone and Internet Counselling as practiced by BCACC members.

(ii)... that this Board consider the question of a need for geographical limitations of practice in reference to licensure and insurability.**

*** Issues concerning where a BCACC member is entitled to practice and where a BCACC member is insured to practice may not be fully addressed in the current Bylaws and Code of Ethics. Questions to consider include: When a client calls from another province, state or country is the counsellor practicing in BC or in the client's location? Is a counsellor bound by laws and ethical codes of the counsellor's geographical location or that of the client's or both? Should an RCC be insured to practice outside of BC?*

Further Reading:

Hass, L., Benedich J., & Kobos J. (1996), *Psychotherapy by Telephone: Risks and benefits for psychologists and consumers*. **Professional Psychology: Research and Practice**. Vol. 27(2), 154-160.

APPENDIX I

Resource Question Bank

The following questions (adapted from the referenced publication and from this committee's dialogue over the past year) may be helpful in clarifying ethical practice as it relates to telephone and other media based counselling:

- ◆ Is this the most beneficial choice of treatment or should face-to-face counselling have been recommended for this client?
- ◆ Are there specific circumstances which prevent face-to-face counselling being made available to this client?
- ◆ Are both client and counsellor environments free of distraction or interference with communication? How is this assured?
- ◆ What steps does the counsellor take to ensure confidentiality and privacy to the client, in both communications and in billing practices?
- ◆ What is the defined scope of practice in this service? Does the counsellor have appropriate training and experience to offer this form of service? Could the same services be obtained elsewhere at significantly lower or without cost?
- ◆ What is the counsellor's method of record keeping? If the counsellor no longer offered this service, how would client records be maintained and how could a client access file information?
- ◆ What are client expectations for this method of treatment and its limitations?
- ◆ What measures does the counsellor take to ensure that the client fully understands financial arrangements and costs?
- ◆ How are Informed Consent and Release of Information established? Is this fair and reasonable for the client?
- ◆ How is client age identified (in order to prevent inadvertent services to a minor without parental consent)?
- ◆ Does the counsellor identify herself/himself clearly - including qualifications, areas of competence, and affiliation with BCACC? How is this information available to the client for future reference?
- ◆ Does the counsellor demonstrate that the best interests of the client are placed ahead of personal interests? e.g. How is length of time or accrued cost communicated to the client without interfering with continuity of the session?
- ◆ Are client screening or assessment procedures adequate to identify client needs?
- ◆ How is client progress and termination handled?
- ◆ Could a client ensure that they were contacting the same counsellor? In the case of more than one counsellor, how are client records handled and is the client asked to give a Release of Information to other counsellors?
- ◆ What proportion of client billed time is given to informed consent, screening, billing and services expectations; and what proportion is given to actual delivery of services?
- ◆ How is this service advertised? Are implied client expectations fair and realistic?
- ◆ What alternatives are offered to callers in crisis or clients needing services outside of the scope of this service?
- ◆ In a case of high suicide risk, how is this determined and what measures are taken to ensure client safety?
- ◆ Does the counsellor gather sufficient information and what is the procedure in a case where a counsellor has a duty to report risk of harm to the client, a child or others?
- ◆ Do clients make contact from BC locations? How is this identified? How are requests from outside of BC handled? Is the counsellor professionally able to practice in the client's province, state or country? Is the RCC insured to practice in the client's province, state or country? Does the counsellor have adequate knowledge of the laws and crisis oriented resources in the client's province, state or country?

Counselling via Telephone & Computer
June 1996

TECHNOLOGY STANDARDS FOR ETHICAL PRACTICE

Acknowledgement

The BCACC would like to acknowledge the British Columbia Art Therapy Association for their assistance offered in this effort. The BCATA allowed us to use their Technology Guidelines: BCATA Recommendations for Ethical Practice as a working form to begin our definition of ethical practices regarding technology.

Credit to the Code of Ethics of the National Board of Certified Counsellors and the American Counseling Association. Thank you.

Additional references and sources are named in the Bibliography section at the end.

INDEX

- 1) LEGAL AND INSURANCE CONSIDERATIONS**
- 2) SKILLS AND EXPERIENCE**
- 3) CONFIDENTIALITY**
- 4) ESTABLISHING THE ELECTRONIC COUNSELLING RELATIONSHIP**
- 5) FILE MANAGEMENT**
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 - a) Computer Files, computers and Networks**
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 - e) Website Management**
 - f) Internet**
 - g) Relay Chat Channels**
 - h) Fax and Telephone Management**

BIBLIOGRAPHY

Principles

The development of the Technology Standards has been guided by the following Principles:

Recognizing the ever-changing advancements in technology, these standards should be reviewed frequently.

It is the obligation of Registered Clinical Counsellors to comply with BCACC's latest *Code of Ethical Conduct and Standards of Clinical Practice*. The following Technology Standards are intended to address ethical practices, which are unique to Web counselling, supervision and consultation, and to Telephone and Fax communication. These Technology Standards are not meant to duplicate or replace the *Standards of Clinical Practice for Registered Clinical Counsellors* but are to be used in conjunction with them.

Ethics cases before the Inquiry or Discipline Committee should be reviewed in light of service delivery systems existing at the moment rather than at the time these standards were adopted.

The practice of Web Counselling is defined as "the practice of professional counselling that occurs when client(s) and counsellor are in separate locations and utilize electronic means to communicate over the Internet" (Adapted from Bloom, 1998).

Legal and Insurance Considerations

1. RCCs review pertinent legal and ethical codes for possible violations emanating from the practice of electronic counselling, supervision and consultation.
2. As there is no legal ruling as to whether telephone or internet counselling takes place in the counsellor's location or the client's location, RCCs review local laws and customs in both their own area and in the area where the client resides. RCCs carefully consider local legal requirements regarding age of consent and child abuse reporting.
3. Errors and Omissions Liability Insurance Policies are reviewed to determine that (1) the professional practice of electronic counselling, supervision and consultation are covered activities; and that (2) the specific types of communications and their applications are covered. (3) RCCs ensure that insurance coverage extends to the area of the client. RCCs who provide electronic counselling while either they or their clients are travelling out of their own areas ensure that insurance extends to cover them while either party is travelling.

Counsellor Skills and Experience

1. RCCs obtain adequate training and skills to ensure that their uses of electronic technologies comply with all BCACC standards.
2. Ensure a good working knowledge of the computer including its software programs. Upgrade training and skills to keep abreast of advances in technologies used both within the profession and within the electronic medium.

3. Secure necessary support services (1) to protect the client file database and (2) to endeavor to remain available to the client in the event of technical problems.

Confidentiality

Disclosure to Clients:

1. In addition to providing clients with sufficient information to adequately explain (1) the limitations of computer technology in the counselling process in general, RCCs explain in detail (2) the difficulties of ensuring complete client confidentiality of information transmitted through electronic media.

Limits of Confidentiality

1. In cases where local legal requirements regarding child abuse reporting differ in the area of the client from those in the area of the counsellor, the RCC informs clients of the limitations of confidentiality in the light of the law in both areas.
2. Inform the client of the identities and qualifications of all counsellors, supervisors, and others that are to have access to information transmitted by the client.
3. Inform clients if any or all sessions are being supervised and how the supervisor preserves session transcripts.

Electronic Transfer of Client Information

1. RCCs electronically transfer client confidential information to authorized third-party recipients only when (1) the informed written consent of the client, acknowledging the limits of confidentiality, has been obtained; (2) both the counsellor and the recipient have "secure" transfer and acceptance communication capabilities; (3) the recipient is able to protect the confidentiality of the confidential information to be transferred.

Provide On-Line Security

1. **Secure sites:** to reduce the risk of potential breaches of confidentiality RCCs provide one-on-one on-line counselling only through "secure" Websites or E-Mail communications applications which use appropriate encryption technology designed to protect the transmission of confidential information from access from unauthorized parties.
2. **Non-Secured Sites:** To reduce the risk of potential breaches of confidentiality, RCCs provide only general information from "non-secure" Websites or E-Mail communications applications.
3. **Computer, Computer file Security:** RCCs use appropriate technology, such as passwords and encryption programs, anti viral programs, and data backup to protect computers, files and directories against unauthorized access to confidential information; and they provide clients with information about security arrangements.

Client Waiver and Informed Consent

- 1. Client Waiver:** (1) Clients sign a client waiver agreement stating that the client acknowledges the limitations inherent in ensuring client confidentiality of information transmitted through on-line counselling. (2) Clients waive the right of confidentiality with respect to confidential information transmitted through on-line counselling that may be accessed by any third party without authorization of the client and despite the reasonable efforts of the counsellor to secure the on-line environment. (3) If the client is unable or unwilling to consent to the client waiver, the RCC declines to provide services and refers the client to another professional who provides a more traditional method of counselling.
- 2. Client Informed Consent:** Clients sign an authorization giving permission for the RCC to send information via electronic means. The authorization stipulates the inherent risk in using electronic means of communications.

Establishing The Electronic Counselling Relationship

The Appropriateness of Electronic Counselling

RCCs advise potential clients on the website of those issues that may not be appropriate for on-line counselling, such as suicidal issues, psychiatric disorders and sexual abuse.

1. RCCs develop an intake assessment procedure to determine whether electronic counselling is appropriate for the needs of the client. RCCs warn potential clients that electronic services may not be appropriate in certain situations and, to the extent possible, they inform clients of specific limitations, potential risks and potential benefits relevant to the client's anticipated use of electronic counselling services.
2. Ensure that: (1) potential clients are intellectually, emotionally and physically capable of entering into the counselling relationship; (2) that they are able to give informed consent; and (3) they are capable of using the electronic services and of understanding the potential risks and limitations of such services.
3. If the RCC enters the counselling relationship and later determines that electronic counselling is not appropriate for the client, the RCC declines further services and refers the client to an appropriate professional.
4. RCCs take responsibility to learn about the different cultures in which their clients live and work. Awareness of cultural considerations is essential when the client is in a different geographic location.

Minor or Incompetent Clients

1. In the event that the client is a minor, incompetent, or incapable of giving informed consent, RCCs obtain the written consent of the legal guardian or other authorized legal representative of the client prior to commencing on-line counselling or mentoring services to the client. Validate the identity and consent authority of the guardian.

Counsellor and Client Identification

1. RCCs provide clients with verifiable information about their education, professional training, credentials, affiliations and experience, including contact numbers for all relevant certification or regulation bodies to ensure that the client has adequate access to recourse, or to further information. However, RCCs protect themselves from unscrupulous users of the Internet by limiting potentially harmful disclosures about self and family.
2. RCCs verify the identity of clients, and verify the age of any client who they suspect might be a minor posing as an adult.
3. Implement an identification system between the client and counsellor, such as the use of a code word, number or graphic.

Emergency Procedures

1. (1) Obtain alternate methods of contacting clients in emergency situations. (2) Develop and discuss with the client alternate communications strategies in the event of on-line technical problems.
2. RCCs provide clients with information concerning crisis intervention, including (1) the counsellor's own emergency procedures; (2) contact numbers for local crisis intervention services; (3) provide a reference to an appropriate professional, whom the RCC has contacted beforehand, and who agrees to provide emergency counselling within the client's geographical location.

Communications Procedures

1. Provide clients with a schedule of times during which the on-line counselling services will be available, including reasonable anticipated response times for both RCC and client.

Keeping Records

1. Inform clients of how session data are being preserved, what data are preserved, and for how long they are preserved.

Technical Considerations and Suggestions

a) Computer Files, Computers, and Networks

Description:

The security of client files may be at risk when stored on a hard drive of a standalone computer or on a computer that is part of a networking system.

Precautions:

1. **Protect Files with a Password:** Assessments, sessional notes, reports, and any other file contents of a clinical nature are **password protected**. Additional codes are used so that directories do not reveal client identities. File protection is used with standalone, network computers and Email transmissions.
2. **Use Password Protected log-on:** When clients' names or other confidential clinical information appears in directories.
3. **Use Encryption Programs.**
4. **Use Data Backup Disks:** RCCs back up their day's work and the entire database daily. Backup discs are kept separate from the hard drive. A second back-up disc of the entire system is made weekly and this copy is kept separate from the office.
5. **Transferring information by disk:** It is suggested to use courier only. Avoid using the regular mail system.

b) Technical Failure and Computer Viruses

Description:

The internal security of files may be at risk due to a potential for technical failure and computer viruses.

Precautions:

1. **Antiviral programs:** Install antiviral programs on any computer that will be used for inputting client data. Update your antiviral program regularly.

c) E-Mail

Description:

The Electronic (Email) transmission of client information may be vulnerable to unauthorized viewing and manipulation by unauthorized personnel. Email sent without reasonable precautions risks client confidentiality.

Precautions:

1. **Password protection at the directory level:** This refers to the protection of files saved within a directory by allowing access to those files only with a secret password. In addition, file names in directories are disguised so as not to expose confidential client information.
2. **Assess the security of the E-Mail receiving site:** Ensure that those sites receiving the RCC's Email respect both the confidential nature of the E-Mail and accept responsibility for its secure management.
3. **Assess disk management at the receiving site:** This refers to security upon arrival, the quality of storage provided for computer disks, and the nature of restrictions placed on the personnel who have access to them.

d) Laptop Computer Security

Description:

The security of client information stored in transportable computers may be compromised due to the vulnerability of these kinds of computers to loss, theft and damage.

Precautions:

1. Install a code entry password.
2. Install an encryption program.
3. Back up data frequently on a disk.
4. Use a locking cable for use outside the home or office.

e) Website Management

Description:

It is incumbent on the RCC that website marketing and promotion tools comply with the BCACC Code of Ethical Conduct and Standards of Clinical Practice, and the Principles and Standards for Advertising and Soliciting Clients.

Precautions:

Maintain appropriate professionalism when creating a home page (being particularly aware of the degree of self-disclosure).

f) Internet Relay Channels**Description:**

Unlike E-Mail wherein transmission is delayed, chat line transmission occurs 'in the moment'. This immediacy poses several issues, which may be problematic to professional standards of practice. Unless specific arrangements have been made to ensure confidentiality (such as engaging in a private and secure chat room), chat lines are generally not confidential.

Precautions:

Given the informal environment of a chat line, RCCs ensure that their participation follows the usual parameters of conduct as outlined in the BCACC Code of Ethical Conduct and Standards of Clinical Practice for any professional exchange.

1. Do not use Internet relay chat lines as a forum to discuss clients unless: (1) Confidentiality can be assured; (2) written permission has been secured by the client; (3) and information which may expose the client's identity is excluded from all dialogue.

g) Fax and Telephone Management**Description**

All relevant standards in this document apply to fax and telephone communication with or about clients. For more detail, please refer to our Guidelines for the Secure Transmission of Facsimile Information. These guidelines were written by the office of the Information and Privacy Commissioner for BC, and were adopted, with permission, by BCACC in 1996.

The confidentiality of information transmitted via fax or telephone, particularly cellular phones, may be at risk.

Precautions:

1. When sending information by fax, check the number dialed before transmission.
2. Ensure that the individual for whom the fax is intended is present to personally receive it at the time of transmission by calling prior to fax transmission, particularly if the fax machine at the receiving site is located in a common area.
3. Use a fax cover sheet when transmitting confidential information. Ensure sender and receiver are named, as well as the number of pages, and a confidentiality clause in case the fax is received in error.

4. When using analog cellular phones, avoid reference to information that might identify a client or otherwise compromise confidentiality.
5. Cellular phones using digital technology use encryption and are therefore secure. However, some digital cellular phone providers occasionally use analog technology without the knowledge of the telephone user: in this case, use the same precautions as outlined for analog cellular phones.

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GUIDELINES FOR THE SECURE TRANSMISSION OF FACSIMILE INFORMATION

"Guidelines for the Secure Transmission of Personal Information by Fax" has been written with permission from the Office of the Information and Privacy Commissioner for British Columbia. This timely article focuses on the reality that we are living with the impact of new technology and the lag in information as it applies to the counselling field. How many texts include discussion on faxing? How have each of us handled our ethical obligation to adequately protect client confidentiality in facsimile transmission procedures? The following is a summary of guidelines which may be helpful for counsellors and agencies:

- I. Categorize data in terms of degree of security required to ensure protection of sensitive and personal information.
- II. Do not locate fax machines in a public area. Centralize fax machines and restrict use to persons authorized to handle confidential information.
- III. Make use of security features on fax machines:
 - check PRINTOUTS OF ACTIVITY HISTORY (both sent and received) to compare transmission
 - activity for accuracy in fax numbers and number of pages transmitted.
 - KEYLOCKS and CONFIDENTIAL MAILBOXES can control who uses the fax machine
 - ENCRYPTION renders transmitted information meaningless until a receiver decodes the data.
 - Although this is one of the most effective means of protecting transmissions, both sender and recipient must have compatible fax encryptors.
 - in the absence of security options, consider faxing personal information without identifiers.
- IV. Control the environment in which faxes are received. Senders are usually unaware of the recipient's operating environment. Public areas and after hours transmissions increase the risk of loss in confidentiality, consider locating an after-hours fax machine in a secured location.
- V. Ensure that faxes reach the intended party:
 - use a master list of authorized fax numbers and confirm destination fax numbers before transmission
 - check displayed number during each transmission
 - use a cover page to clearly identify sender and intended recipient(s)
 - include a confidentiality clause requesting notification if a fax is received in error on computer faxes, store incoming faxes in a directory accessible only to authorized persons
 - develop procedures to ensure only intended recipient takes custody of incoming data
 - if you receive a fax in error, notify the sender and shred the document or return the document by hand or registered mail

By doing nothing to ensure confidentiality, the sender of a fax places the onus for protecting confidentiality on the recipient. From an ethics perspective, we have a responsibility, as sender, to actively minimize the risk of breaches in confidentiality.

GUIDELINES FOR THE SECURE TRANSMISSION OF FACSIMILE INFORMATION⁹

Introduction

The facsimile, commonly referred to as the "fax", is widely used to communicate information from one location to another over ordinary telephone lines. Since its inception in the 1980's, fax communication technology has undergone rapid changes. Computing power has dramatically increased, and the use of networked systems has grown. Improvements in fax technology and the capability of computers to send and receive faxes have given users a number of operational advantages:

- computerized databases of telephone lists can be maintained and used to send faxes to groups of people;
- the size of a document is no longer an issue, and people are no longer restricted to printed documents;
- virtually any information that is stored on a computer, such as letters, reports, spreadsheets and pictures, can be faxed;
- a fax can be compiled from various sources of information stored on a computer;
- unlike a printed document that is handled by a fax operator, it is easy to edit a fax that is stored on a computer--either before sending or after receiving it; and
- anyone with a computer and the necessary hardware and software can send and receive faxes.

Most microcomputers today can have internal or external fax/modems, giving operators the capability of sending and receiving faxes directly from their desk, workstation or office. In addition, a variety of commercially available computer software packages now have built-in fax capabilities.

Since sending a fax is easier now, the process is more difficult to control and the confidentiality risks have increased. The advent of computerized faxing means that fax activity reports can be deleted without leaving any trace of what was faxed and by whom. It is therefore important to ensure that policies regarding fax use deal effectively with the risks of ongoing technological developments in this area.

Developments in mobile computing or wireless communications have added another element of risk regarding the transmission of faxes. A laptop or notebook computer equipped with fax hardware and software can send or receive faxes using a cellular telephone. As well, portable hand-held fax machines can operate virtually anywhere.

Fax technology, if used to transmit confidential client material, presents significant risks to client confidentiality. For example, sensitive material can be inadvertently transmitted to the wrong destination; the sender may dial the wrong number; or the intended recipient may not be available to

⁹ The BCACC Ethics and Standards Committee gratefully acknowledges the Office of the Information and Privacy Commissioner for British Columbia for permission to adapt its "Guidelines for the Secure Transmission of Personal Information by Fax", August 1996.

accept the fax, and an unauthorized person receives it instead. Since telephone (e.g. fax) messages can be intercepted and/or misdirected in these ways, they have the potential of becoming *public* messages.

Our Ethical Practice Standards state:

Counsellors ensure that information involving clients....*which is presented publicly in any form* [italics added] is presented so as to adequately protect the identity and dignity of the clients....

It has become common practice to use disclaimers/warnings on fax cover sheets, indicating the restricted and/or confidential nature of the transmission, and directing the receiver of the fax to take some sort of remedial action in case of error. This in effect places the onus of responsibility on the receiver to deal with such errors. However, in the absence of guarantees that the receiver will act on this responsibility, the onus should and in fact does remain on the *sender* to prevent such problems. These Guidelines are designed to encourage counsellors in private practice or in organizational environments to safeguard the confidentiality, integrity, and availability of personal, client and business information which they have created, stored, processed, or communicated through information technology, including faxes.

Guidelines

1. Data should be categorized

Not all information held by an organization requires the same degree of security when communicated from one source to another. Therefore, the first step for organizations is to categorize the various types of information they hold. The appropriate degree of security will depend on the sensitivity and volume of personal information that an organization handles. BCACC should conduct risk analysis on the types of information transmitted or received by fax. The higher the risk the faxed material represents, the more security required in faxing that material.

2. Only authorized persons should send faxes

Office support staff are usually authorized to send faxes. In a small or medium-sized office, other staff members are likely to fax information. In a larger office with a high volume of fax transmission, organizations would centralize fax operations. Restricting the use of fax machines to authorized persons reduces the potential of unauthorized disclosure.

Generally a specific individual should be responsible for fax operations. In case of problems, technical or otherwise, staff will know whom to contact. Fax machines should also be located so that:

- they are not in public areas
- their use can be monitored by authorized persons; and
- only authorized staff have access to information transmitted or received.

If computers are used to send and receive faxes, fax capabilities should be restricted to authorized persons, and they should automatically route incoming faxes to a predetermined directory that can only be accessed by authorized persons.

3. Organizations should ensure the security of faxes

Commercially available fax machines have a variety of security features that can

enhance the security of fax transmissions:

Activity Reports

Almost all fax machines can print a fax activity confirmation report, or journal, after each transmission. These reports confirm whether a document has been correctly transmitted by indicating the destination fax number and the number of pages transmitted. A sender should confirm the success of a transmission by checking this report. A recipient should check the number of pages actually received against the transmitted fax cover sheet, or the fax activity confirmation report when no fax cover sheet was transmitted. If pages are missing, contact the sender and have the information re-transmitted.

Most fax machines are also able to print fax activity history reports based on either a time span or a volume of activity. For example, a fax machine can be programmed to print a history of its activity after every 40 transactions. This report helps monitor and account for fax activity. On most machines, however, once this report has been printed, it cannot be reprinted. Therefore, it is possible for an unauthorized user to print these activity reports and destroy them, leaving no trace of unauthorized activity.

Keylocks and confidential mailboxes

Some offices may need to fax sensitive information that requires additional security protection. Features such as "keylocks" and "confidential mailboxes" may be used to overcome some security risks. In these cases, the fax machine can be equipped with a keylock dedicated to this purpose. A keylock is a fax security device which, when activated, prevents both the transmission and reception of faxes. By installing a keylock, an office can control who uses a fax machine.

Some fax machines contain confidential mailboxes, which store incoming documents. Documents that are transmitted into a confidential mailbox can only be printed after the correct password has been entered. In this way, only a specific person can receive a transmitted document. Both the sender and recipient must have machines with the mailbox feature.

If sending sensitive personal information by fax is unavoidable, confidential mailboxes provide the best security. If confidential mailboxes or secured directories are not available, personal information could be faxed without any personal identifiers. In order to preserve the contents of a confidential mailbox during a power disruption, some users equip fax machines with a more permanent storage device, such as a hard disk. The contents of a hard disk are not lost during power failures.

Encryption

At present, faxes are transmitted over ordinary telephone lines or cellular networks. They can be tapped and intercepted by unauthorized third parties. The best mode of prevention is to encrypt the information so that it is rendered meaningless until decryption. Encryption of information is one of the most effective means of protecting transmissions from being intercepted and read by unauthorized persons. Any fax machine can be equipped with an encryption device. Fax encryptors are available as a software option or a hardware device for use in computers. They are easy to use and automatically generate and distribute the necessary encryption keys to secure fax transmissions.

However, to use fax encryptors, both sender and recipient must have the same type. This drawback may limit their widespread use. Fax encryptors are a practical safeguard for a "closed" group of frequent users. For larger organizations, groups of users may consider dedicating one fax machine to encrypted transmissions. All users connected with this group could then install the same type of fax encryptor. Thus, if a fax was sent to a machine not equipped with a compatible encryptor, the recipient would not be able to read the fax.

4. Control the environment in which faxes are received

The physical location of fax machines impacts the security of fax transmissions. Offices sometimes situate their fax machines in a relatively public place where they can be used by virtually anyone, enabling unauthorized persons to read information. Such an environment makes it difficult to maintain the confidentiality of personal information.

Senders are usually unaware of the recipient's operating environment. A sender could fax confidential information on the presumption that the recipient's office is secure, when it is not. Consequently, non-standardized office procedures relating to fax use can result in the loss of confidentiality.

Organizations may often receive fax messages after hours. For such purposes, one option is to identify and isolate a specific fax machine. Such a machine should be physically secured from access by unauthorized persons, such as custodial personnel. Another option is to activate a fax machine's confidential mailbox feature upon locking up the office for the after-hours period.

5. Ensure that faxes reach their intended parties

In the past, dialing a wrong fax number resulted in a situation where personal information was erroneously disclosed to one or two persons. Now, erroneously faxed personal information could end up in the hands of dozens of persons who should not have it, or even, depending on circumstances, end up in the media.

A master list of authorized fax numbers should be maintained to serve as a reference list, and destination fax numbers should be confirmed before transmission. Normally, a small screen on the fax machine displays the number dialed. In most instances, the destination fax number can be confirmed by visually checking the number on the screen before transmitting the document. Some computer software also gives the user a chance to confirm the number before proceeding with the transmission.

Although information may be sent to the correct fax machine, it could, nonetheless, reach the wrong recipient. To diminish this possibility:

- The first page of all faxed information should be a fax cover sheet. It should identify the sender(s) and the intended recipient(s).
- The fax cover sheet should include a confidentiality clause indicating that the material is intended for the addressee and is not to be distributed, copied, or disclosed to any unauthorized persons.

Instructions for those who receive a fax in error should ask them to immediately notify the sender.¹⁰

- If a computer is used for fax operations, the directories that store incoming faxes should be accessible only by authorized persons.
- Adequate policies and procedures should be in place to ensure that only the intended recipient takes custody of the incoming fax.
- In cases where information has been transmitted to the wrong fax number, the recipient should inform the sender of the error, and destroy (shredding is recommended) or return (by hand or registered-mail) the faxed information.

SUMMARY

Sending

- Establish and control the type of information that may be sent by fax.
- Use a fax cover sheet that identifies the sender, recipient and number of pages.
- Ensure that fax number master lists are current and accurate.
- Regularly check the accuracy of pre-programmed numbers.
- If you must send sensitive personal information, make a phone call to confirm the destination fax number and the recipient.
- Visually check the number displayed on the screen for accuracy before proceeding with a manual transmission.
- Consider the use of technical safeguards, such as keylocks and encryption, to secure information.
- Check fax activity confirmation reports/journals for accuracy of the fax number and the number of pages transmitted.
- Program the fax machine to print fax activity histories every 30 to 40 transmissions.
- When faxing sensitive information, consider the use of unique identifiers or codes to protect the identity of individuals.

Receiving

- Locate the fax machine out of public areas and control access to it, especially after hours.
- Notify the sender of an erroneous transmission and shred or return (by hand or registered-mail) the faxed information.
- Check the number of pages actually received against the fax cover sheet.
- Use confidential mailboxes to secure sensitive information.
- If a computer is used for receiving, automatically route incoming faxes to a directory that can only be accessed by authorized persons.

Storing

- If photocopying a confidential fax for retention, shred extra copies.
- Retain fax activity confirmation reports and fax activity history reports for a sufficient time to check for unauthorized transmissions.
- Establish policies and procedures to ensure that only the intended recipient takes custody of a fax.

¹⁰Note: This in effect places the onus of responsibility on the receiver to deal with errors. However, in the absence of guarantees that the receiver will act on this responsibility, the onus remains on the *sender* to minimize the chance of such problems occurring. These guidelines are meant to assist in the task.

- If a computer is used for storing faxes, set up computer directories so that they are only accessible by authorized people.

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