DUTIES TO REPORT AND PROTECTION WHEN REPORTING

Prepared by Clive Perraton Mountford and George Bryce

Current to: May 1, 2014

Summarizing information set out in the legal commentary How Private Is Private?
Bryce, G, revised May 1, 2014.

1. Duty to report if a child is in need of protection
Section 14 of the Child, Family and Community Service Act (CFCSA) states that if a counsellor has reason to believe that a child under 19 years of age has been, or is likely to be, physically harmed, sexually abused or sexually exploited, or is otherwise in need of protection, the counsellor is required to report this to the appropriate authorities. (The appropriate authorities would usually be MCF or the police.)

If the counsellor’s knowledge of possible harm is indirect (for example, a client has told the counsellor about the situation involving a child), it is best to encourage the person with the most immediate evidence of risk to act on their duty to report. However, if that person is unwilling to do so, the duty to report would then devolve to the counsellor.

The threshold of this duty to report is low. A counsellor is not expected to undertake a thorough risk assessment of the child; this will be done by the child protection authorities. The counsellor’s duty is to simply report if a child is at risk or might be in need of protection.

A counsellor breaching client confidentiality to report a child in need of protection is themselves protected under both the CFCSA and the Personal Information Protection Act (PIPA) so long as such a report is not done for a malicious or improper purpose. This is important to note. Client consent is not required in order to report a child in need of protection. Note, too, that under section 18(1)(o) of PIPA, the counsellor does not have to notify the affected client that the counsellor has breached client-confidentiality.

2. Duty to report if a child may self-harm
A counsellor is also required under the CFCSA to report severe self-destructive or aggressive behavior to the child protection authorities. There are no exceptions to this requirement.

However, an initial report can be made anonymously in order to discuss the client’s situation without breaching confidentiality. It may then be determined whether the counsellor is best placed to help the child, and prevent the child from putting his or her own life at risk, or if confidentiality needs to be broken and other persons or agencies involved.

Counsellors should be aware that even a belief or suspicion that a child is suicidal triggers the legal duty to report.
3. **No duty to report if an adult may self-harm, but protected if a report is made**

Unlike the situation for children, there is no legal duty at common law or in a BC statute that requires a counsellor to report the self-harm or potential self-harm (e.g. suicide) of an adult client.

However, if a counsellor reasonably believes that an adult’s suicide or serious self-harm is imminent, the counsellor would be legally protected under section 18(1)(k) of PIPA if the counsellor so reported to the authorities. After such a report has been made, however, 18(1)(k) of PIPA then requires the counsellor to notify the client whose personal information has been disclosed in that report and to do so by mailing a notice of disclosure to the client.

This requirement, of course, can act as a deterrent for counsellors reporting adults who are likely to self-harm.

4. **Authority to report if a vulnerable adult has been abused**

Section 46 of Adult Guardianship Act (AGA) provides that anyone with information indicating that a vulnerable adult has been abused or neglected (where that adult is unable to seek their own support and assistance) may report that abuse and do so without fear of sanction. Therefore, a counsellor should feel free to report such situations to the authorities.

It is important to understand that the AGA does not state there is a legal duty to report. Instead, the AGA gives a counsellor the authority to breach client confidentiality in defined circumstances.

A duty to report the abuse or neglect of a vulnerable adult could be implied from the wording of the AGA as a whole. However, to date, the courts have not yet recognized such a duty. Even so, a counsellor with reason to suspect that a vulnerable adult has been abused or neglected is best advised, prima facie, to either report that abuse or satisfy themselves that someone else has reported the abuse.

Again, a counsellor is not expected to undertake a thorough risk assessment of the vulnerable adult’s circumstances; this will be done by the appropriate authorities. The counsellor is simply authorised to report.

Client consent need not be obtained in order to make such a report. A counsellor is protected under both the AGA and the PIPA in breaching client confidentiality in order to make a report so long as it is not for malicious or improper purpose. Under section 18(1)(o) of PIPA, the counsellor does not have to notify the affected client that the counsellor has breached client-confidentiality.

5. **Duty to report or warn if an adult is under an imminent risk of serious harm**

Popularly known as “Tarasoff warnings”, in the landmark 1999 case of Smith v. Jones, the Supreme Court of Canada found that a health professional like a counsellor has a
common law duty to report to the authorities (or warn a third party at risk) if the
counsellor has a reasonable ground to believe that an adult is facing an imminent risk of
serious harm or death. (A similar risk of harm to a child would be covered under the first
duty to report, as discussed in Topic 1, above.)

Unlike when reporting a child in need of protection, or reporting the abuse or neglect of a
vulnerable adult, there is no statutory authority who will step in and undertake a risk
assessment in consequence of a Tarasoff warning. The counsellor’s own risk assessment
is likely to be the primary triggering event for intervention. Therefore, a counsellor
contemplating a Tarasoff warning should consider all circumstances relevant to the
situation, and carefully assess the risk to the best of their ability, before breaching an
adult client’s confidence.

A Tarasoff warning is covered under section 18(1)(o) of PIPA, and warnings given under
section 18(1)(o) need not be accompanied by a subsequent notice of disclosure to the
client. In other words, a counsellor giving a warning or notice to the authorities because
they have a justifiable belief that an non-vulnerable adult is at imminent risk of serious
harm or death because of a client’s meaningful threat is not required to inform the client
that they have done so.

6. No duty to report abuse of an animal, but…

Counsellors do not have a legal duty to report the abuse of an animal. Veterinarians
are the only profession that holds such a duty.

If a counsellor knows of the abuse of an animal, involving a veterinarian in the
situation should result in the abuse being reported. However, in practice, it is
unlikely that will be an easy thing to do.

If a child or vulnerable adult shares accommodation with the abuser, then a
counsellor should pay serious attention to the possibility that abuse will transfer to
harm the child or vulnerable adult. Where such a possibility exists, the counsellor
may find that the reporting requirements described in Topics 1 or 4 (above) have
been met. A counsellor would be protected in such situations.

The College of Physician and Surgeons of BC views animal abuse by a child as an
indirect sign of possible sexual abuse and advises that it triggers a physician’s duty
to report a child in need of protection. Similarly, a counsellor who knows a child has
abused an animal can take this as grounds for making a report to the child
protection authorities. Again, a counsellor would be protected in such situations.

Animal abuse is prohibited by both BC regulatory and Canadian criminal law.
Although, as noted above, counsellors do not have an explicit legal duty to report the
abuse of an animal, a counsellor who files a complaint with the police in good faith
should be protected from civil action.