

BC ASSOCIATION OF CLINICAL COUNSELLORS

Personal Information Protection Act

**A Counsellor's Guide for Developing
Client Personal Information Protection
Policies and Procedures**

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INTRODUCTION

The *Personal Information Protection Act* came into force on January 1, 2004.¹

The *PIPA* requires all clinical counsellors in private practice to establish policies and procedures concerning the collection, use and disclosure of the personal information they obtain from their clients during the course of their clinical practice. A counsellor in private practice would be a counsellor who is not employed by or does not work for an agency or organization. (Herein “counsellor” refers to a counsellor in private practice, unless the context otherwise requires.)

Counsellors who are employed by or work for an agency or organization should follow the policies and procedures that have been established by their employer or contracting agency. This is because their employer or agency will be subject to either the *PIPA* or the earlier *Freedom of Information and Protection of Privacy Act*.² The employer or agency rather than the employed or contract counsellor has the primary duty under these statutes.

Self-employed counsellors in private practice who work with other counsellors or health professionals in a partnership or an office-sharing arrangements should prepare their own, separate policies and procedures.

What is personal information?

The type of information that is covered by the *PIPA* is defined in section 1 of the Act as “information about an identifiable individual and includes employee personal information”. Employee personal information is defined as “personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment.”

The definition of personal information specifically excludes contact information and work product information. Both of these terms are also defined in section 1. Contact information is “information [that enables] an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.” Work product information is “information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.”

¹ On October 12, 2004, the federal Cabinet found that BC's *PIPA* is substantially similar to the federal legislation, the Personal Information Protection and Electronic Documents Act, and – as a result – the Cabinet approved an order that has the effect of exempting BC counsellors in private practice from having to comply with the federal legislation.

² If the employer or agency is a federally regulated work or undertaking, it may be required to follow the federal *Personal Information Protection and Electronic Documents Act* instead of either BC's *PIPA* or *FOIPPA*.

In summary, the type of information that is subject to *PIPA* is personal information, including information needed for employment, but not business contact or work product information. Most information counsellors obtain from their clients during the course of a counselling session would fall within the definition of personal information, and thus would be subject to the *PIPA* requirements.

Organization of the guideline

This guideline is divided into two parts. Part one contains a detailed explanation of the *PIPA* requirements, and offers counsellors suggestions for complying with the new Act. The second part contains a template that a counsellor can adopt to create a set of policies and procedures that would apply to that counsellor's clinical practice.

The guidelines and model policies have been designed to help a counsellor in private practice meet the requirements of the *PIPA* and are based on the Act's requirements. When a guideline makes reference to a specific section of the Act, the counsellor can assume that the wording of that guideline reflects the wording of the Act itself. If no such reference is given, the counsellor can assume that the guideline is providing more detailed information and assistance than is specified under the Act. A counsellor must follow the requirements of the Act, but need only be guided by the other statements made in Part One.

Counsellors can read the *PIPA* itself and other reference material at the Privacy Commission's website: www.oipcbc.org/private. As noted above, this guideline contains references to the *PIPA* provisions and these should allow easy reference to specific sections of the Act itself.

Paragraph 5(c) of the *PIPA* requires that a counsellor provide a copy of his or her policy and procedures manual to a client or third party on request. The model policies and procedures in the second part have been designed to help a counsellor in private practice prepare his or her own *PIPA* manual. When preparing a manual, a counsellor should replace the text noted in the template in *UPPER CASE ITALIC FONT* with information that is applicable to his or her clinical practice. Suggested wording for specific letters, policies or procedures can be found in boxes throughout this document.

A counsellor should post or provide a copy of his or her policies and procedures manual in the office. A counsellor's consent to treatment form should also be updated to reflect the new *PIPA* requirements.

While every effort has been made to accurately state or summarize the *PIPA* requirements referred to in this guideline, if a counsellor has a particular concern regarding the application of the Act to his or her specific clinical practice or to a client's unique circumstances, the counsellor should consult with a lawyer to obtain the appropriate legal advice.

PIPA exceptions

The *PIPA* exempts certain uses and types of information from the new requirements. These statutory exemptions are listed below as they appear in the Act. If the type of information or the collection, use or disclosure of information by a counsellor falls within one of these exceptions, the *PIPA* does not apply to that information, collection, use or disclosure.

Subsections 3(2) &(3) of the *PIPA* prescribes a number of circumstances when the Act does not apply:

- (2) This Act does not apply to the following:
 - (a) the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose;
 - (b) the collection, use or disclosure of personal information, if the collection, use or disclosure is for journalistic, artistic or literary purposes and for no other purpose;
 - (c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use or disclosure of the personal information;
 - (d) personal information if the *Freedom of Information and Protection of Privacy Act* applies to the personal information;
 - (e) personal information in
 - (i) a court document,
 - (ii) a document of a judge of the Court of Appeal, Supreme Court or Provincial Court, or a document relating to support services provided to a judge of those courts,
 - (iii) a document of a master of the Supreme Court,
 - (iv) a document of a justice of the peace, or
 - (v) a judicial administration record as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*;
 - (f) personal information in a note, communication or draft decision of the decision maker in an administrative proceeding;
 - (g) the collection, use or disclosure by a member or officer of the Legislature or Legislative Assembly of personal information that relates to the exercise of the functions of that member or officer;
 - (h) a document related to a prosecution if all proceedings related to the prosecution have not been completed;
 - (i) the collection of personal information that has been collected on or before this Act comes into force.
- (3) Nothing in this Act affects solicitor-client privilege.

In addition, the *PIPA* does not apply to the collection of personal information that was collected on or before January 1, 2004. This means that a counsellor who collected

information from a client before this date does not have to recollect that same information under the new requirements.

On the other hand, *PIPA* does apply to how a counsellor uses, secures and discloses personal information that was collected before January 1, 2004. Clients have the right to access and request corrections to their personal information collected before this date. A counsellor should ensure that he or she uses and discloses a client's personal information collected before January 1st for a purpose that a reasonable person would consider appropriate in the circumstances and fulfills the purposes for which it was originally collected.

Topics not covered in this guideline

This guideline does not address the *PIPA* requirements that apply to the collection, use or disclosure of personal information that a counsellor may collect, use or disclose concerning an employee. This is known as "employee personal information" (see above re: What is personal information?).

Counsellors who employ staff (paid or volunteer) within their clinical practice are advised to consult the *PIPA* concerning its rules governing the collection, use or disclosure of employee personal information. Counsellors should refer to the Act for the specific requirements that apply to employee personal information.

This document also does not provide guidance on the *PIPA* requirements that apply in relation to the rules concerning the use or disclosure of a client's personal information that may arise in the context of a formal investigation. Counsellors are advised to seek independent legal advice on the Act's requirements if they should find themselves the subject of or involved in a police or professional investigation that involves the use or disclosure of a client's personal information.

Privacy audit

While it is not a specific requirement of the *PIPA*, the BCACC recommends that a counsellor undertake an audit or review of the type of personal information that is collected, used or disclosed in the counsellor's private practice, and the specific ways that the counsellor collects, uses or discloses that information. This need not be a complicated, expensive or time-consuming process. A counsellor could simply prepare an inventory of the types of personal information that is collected, used or disclosed, and identify how that information is collected, used or disclosed. Next, the counsellor should ensure that those steps are in keeping with the Act and, where necessary, are reflected in the policies and procedures manual.

The following are the sort of questions a counsellor should address when doing an analysis of his or her personal information handling practices:

- What sort of personal information about a client do I collect?
- What is the source of this personal information?
- Why do I collect personal information about a client?

- How do I collect this personal information?
- What sort of personal information is particularly sensitive?
- For what purposes do I use the personal information I have collected?
- Is the purpose for collecting, use and disclosure of client confidential information always the same for each client (or group of clients), or does it vary depending on each client (or group of clients)?
- In what circumstances do I use the collected personal information?
- To which other professionals, organizations or others would I disclose the personal information I have collected?
- How do I make the disclosures to these other parties?
- Where do I keep the personal information I collect (i.e. on-site or off-site)?
- How secure is the collected personal information?
- Who other than myself can access or use this information? Who needs to have access?
- When do I normally dispose of the personal information I have collected?
- How do I dispose of this information?

The office of the Privacy Commissioner has prepared a privacy compliance self-assessment tool to help persons and organizations ensure their information handling policies and procedures are in keeping with *PIPA*. A copy of this tool is available at the following website: www.msar.gov.bc.ca/foi_pop/Privacy/Tools/PIPA_Tool_5.htm

A counsellor should not adopt the model *PIPA* policies and procedures set out in Part Two of this guideline until after the counsellor has completed a privacy audit. A counsellor may find that the information he or she gathers during that audit requires there be substantial change to the model policies and procedures.

In considering whether to accept or modify the model policies and procedures, or create new policies and procedures, the counsellor should consider the following additional questions:

- What process do I employ to obtain and record informed consents (to both the provision of counselling services and the collect, use and disclosure of personal information)?
- Do my consent forms adequately reflect the new *PIPA* requirements?
- What steps do I use if a client withdraws consent?
- How do I ensure that the information I collect from a client is accurate?
- How do I receive and respond to a client's request for access to information or to correct information the client believes is incorrect?
- How do I receive and respond to a client's concern (or complaints) about the way that I collect, use, disclose or dispose of personal information?
- What steps will I take to review and revise my *PIPA* policies and procedures on a regular basis?

Related documents

Other guidance has been provided to counsellors in the following related documents, copies of which can be obtained at the BCACC website:

- *Standards for Recordkeeping* (approved November 2000);
- *Standards for Consent to Treatment and Written Disclosure Forms* (approved March 2002);
- *Guidelines for the Secure Transmission of Facsimile Information* (approved Fall 1996).

These standards may be revised in light of the *PIPA* requirements.

Comments or suggestions?

If a counsellor has a question or comment about this guideline or the model policies, the counsellor should contact the BCACC office by phone, email or letter. Comments should be sent to the attention of Glen Grigg, Executive Vice-President.

PART ONE – GUIDELINE FOR UNDERSTANDING THE PIPA

Terminology

The following definitions apply to this guideline:

- “Client” means the person who is receiving clinical services from the counsellor, whether or not that person is paying for those services and includes, if the context so requires,
 - (a) a personal representative of the client who is authorized to represent the client under the authority of the *Representation Agreement Act*,
 - (b) a decision-maker or guardian appointed under the *Adult Guardianship Act*,
 - (c) a temporary substitute decision maker who has been chosen under the *Health Care (Consent) and Care Facility (Admission) Act*, or
 - (d) a committee of the person appointed under the *Patients Property Act*;
- “Counsellor” means a Registered Clinical Counsellor in private practice who is not employed by or work for an agency or organization to provide clinical services to clients, and refers to the counsellor designated in guideline 1.1;
- “Payor” means the person or organization paying for the counsellor’s services, whether or not that person or organization is receiving those services and this term is included in the definition of a Client if the client is paying for the services directly;
- “Personal Information” means information about an identifiable person, such as information about the circumstances that has led them to seek counselling, but it does not include contact information such as their title, or business telephone, address, email or fax number (see section 1 *PIPA*);
- “Third party” means a person or organization that is involved in the counsellor’s provision of services to the client and may provide personal information to the counsellor, but is not a Client.

GENERAL REQUIREMENTS

1) Designated contact

1.1) As a self-employed health care professional in private practice, a counsellor must - pursuant to subsections 4(3) to (5) of the *PIPA* - designate him or herself as the person who is responsible for ensuring compliance with the *PIPA* and the administration of the counsellor’s policies and procedures, including responding to client complaints.

2) General responsibility

2.1) Pursuant to section 4(2) of the *PIPA*, the counsellor designated in guideline 1.1 (above) is responsible for a client's personal information that is under the counsellor's control, including personal information that is not in the counsellor's custody but was collected by the counsellor.

2.2) For example, if the counsellor stores a client's personal information in a location other than the counsellor's office, the counsellor remains responsible for the proper storage and disposal of that information. (See also guideline 33.3, below.)

3) Reasons for the collection, use and disclosure of personal information

3.1) In accordance with paragraph 5(a) of the *PIPA*, prior to collecting, using or disclosing personal information about a client, the counsellor will advise the client or third party concerning why the personal information is being collected, used or disclosed by the counsellor.

4) Informing clients

4.1) A counsellor should either post a notice or set out in a consent form information that advises the client that the counsellor is responsible for ensuring compliance with the *PIPA* and the administration of the policies and procedures.

4.2) Part Two of this guideline is model set of *PIPA* policies and procedures, which can be posted or made available at the counsellor's office.

CONSENT

5) Consent required

5.1) Section 6 of the *PIPA* states that counsellor must not collect, use or disclose personal information about a client unless

- (a) the client gives consent to the collection, use or disclosure,
- (b) the Act authorized the collection, use or disclosure is authorized without the consent of the client (see guidelines 13, 15 and 17, below), or
- (c) the Act deems the collection, use or disclosure to be consented to by the client (see guidelines 7 and 8, below).

5.2) Under the *Infants Act*, a client under the age of 19 who understands the nature of the therapy that he or she will receive can also give their consent and the child can give consent without a parent or guardian's knowledge or approval.³

³ 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.

6) Provision of consent

6.1) Subsection 7(1) of the *PIPA* provides that a client has not given consent to a counsellor unless

- (a) the counsellor has provided the client with the information required under subsection 10(1) of the Act (see guideline 10.1, below), and
- (b) the client's consent is provided in accordance with the Act and as described in these policies and procedures.

6.2) Subsection 7(2) of the *PIPA* states that counsellor must not, as a condition of supplying a product or service, require a client to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service.

6.3) A counsellor will not attempt to obtain consent from a client for collecting, using or disclosing personal information by

- (a) providing false or misleading information respecting the collection, use or disclosure of the information, or
- (b) using deceptive or misleading practices.

7) Implied or deemed consent

7.1) According to subsection 8(1) of the *PIPA*, a client is deemed to consent to the collection, use or disclosure of personal information by a counsellor for a purpose if

- (a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and
- (b) the client voluntarily provides the personal information to the counsellor for that purpose.

7.2) While a counsellor may be able to rely upon implied or deemed consent in most situations, a counsellor should attempt to obtain informed consent from the client concerning the collection, use or disclosure of personal information by the counsellor (see guideline 9, below).

8) Consent if covered by insurance or similar plan

8.1) According to subsection 8(2) of the *PIPA*, a client is deemed to consent to the collection, use or disclosure of personal information for the purpose of his or her enrollment and coverage under an insurance, pension, benefit or similar plan if he or she is a beneficiary or has an interest as an insured under the plan.

8.2) If a client is enrolled or covered under an insurance, pension, benefit or similar plan, a counsellor should only disclose information to the third party payor that is necessary to confirm the client's entitlement and provide payments to the client or the counsellor.

8.3) While the Act deems that a client has consented to the collection, use or disclosure of information as a beneficiary under an insurance, pension, benefit or similar plan, a counsellor should identify the need for and scope of such collection, use or disclosure so that the client is aware of that deemed consent.

9) Informed consent

9.1) Section 8(3) of the *PIPA* states that a counsellor may collect, use or disclose personal information about a client for specified purposes if

- (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 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.

9.2) A counsellor cannot collect, use or disclose personal information for a purpose different than the purpose to which the information was originally collected.

9.3) As consent is a process, not a form, a counsellor should not rely on having a client simply read and then sign a consent to treatment form without following the steps set out in guideline 9.1, above.

9.4) If consent is given verbally, a counsellor should document that consent in the clinical record.

10) Withdrawal of consent

10.1) Subsection 9(1) of the *PIPA* provides that, on giving reasonable notice to the counsellor, a client may withdraw consent to the collection, use or disclosure of personal information about the client at any time.

10.2) According to 9(5) of the *PIPA*, a client may not withdraw consent if withdrawing the consent would frustrate the performance of a counsellor's legal obligation.

10.3) When a counsellor receives a notice referred to in guideline 10.1 (above), the counsellor must inform the client of the likely consequences to the client of withdrawing his or her consent; for example, the counsellor may then have to cease providing services to the client.

10.4) Subsection 9(3) of the *PIPA* states that a counsellor must not prohibit a client from withdrawing his or her consent to the collection, use or disclosure of personal information related to the client.

10.5) Subsection 9(4) of the *PIPA* provides that, if a client withdraws consent to the collection, use or disclosure of personal information by a counsellor, the counsellor must stop collecting, using or disclosing the personal information unless the collection, use or disclosure is permitted without the client's consent under the Act (see guidelines 13, 15 and 17, below).

COLLECTION OF PERSONAL INFORMATION

11) Required notification for collection of personal information

11.1) Subsection 10(1) of the *PIPA* requires that, on or before collecting personal information about a client from the client, a counsellor must disclose to the client verbally or in writing

- (a) the purposes for the collection of the information, and
- (b) on request by the client, the name and the contact information of the contact person who is able to answer the client's questions about the collection (see guideline 1.1, above).

11.2) On or before collecting personal information about a client from another health professional or organization without the consent of the client, a counsellor must provide the other health professional or organization with sufficient information regarding the purpose of the collection to allow that other health professional or organization to determine whether the disclosure would be in accordance with the Act.

11.3) Subsection 10(3) of the *PIPA* provides that these requirements do not apply to the collection of personal information where consent has been deemed to have been given under subsections 8(1) and (2) of the Act (see guidelines 7 and 8, above).

12) Limitations on collection of personal information

12.1) Section 11 of the *PIPA* provides that a counsellor may collect personal information about a client only for purposes that a reasonable person would consider appropriate in the circumstances and that

- (a) fulfill the purposes that the counsellor discloses as per section 10(1) of the Act (see guideline 11, above), or
- (b) are otherwise permitted under the Act (see guideline 13).

13) Collection of personal information without consent

13.1) Section 12(1) of the *PIPA* allows a counsellor to collect personal information about a client without consent or from a source other than the client in prescribed circumstances.

13.2) The circumstances prescribed under section 12(1) of the *PIPA* that are applicable to a counsellor in private practice include:

- (a) the collection is clearly in the interests of the client and consent cannot be obtained in a timely way,
- (b) the collection is necessary for the medical treatment of the client and the client is unable to give consent,
- (c) the personal information is collected by observation at a performance, a sports meet or a similar event
 - (i) at which the client voluntarily appears, and
 - (ii) that is open to the public,
- (d) the personal information is available to the public from a source prescribed by regulation under the Act,
- (e) the collection is required or authorized by law,

- (f) the information was disclosed to the counsellor under sections 18 to 22 of the Act, or
- (g) the personal information is necessary in order to collect a debt owed by the client to the counsellor or for the counsellor to repay money owed to the client by the counsellor.

13.3) The circumstance described in guideline 13.2(b) above is unlikely to include a counselling session because it anticipates medical treatment being given to a client who is unable to give consent to that treatment, and that circumstance is likely to arise only in a medical emergency when the client is unconscious.

13.4) Subsection 12(2) of the *PIPA* provides that a counsellor may collect personal information from or on behalf of another health professional or organization without consent of the client to whom that information relates, if

- (a) the client previously consented to the collection of the personal information by the other health professional or organization, and
- (b) the personal information is disclosed to or collected by the counsellor solely
 - (i) for the purposes for which the information was previously collected, and
 - (ii) to assist the counsellor to carry out work on behalf of the other health professional or organization.

USE OF PERSONAL INFORMATION

14) Limitations on use of personal information

14.1) Section 14 of the *PIPA* provides that a counsellor may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

- (a) fulfill the purposes that the counsellor discloses as per section 10(1) of the Act (see guideline 11.1, above),
- (b) for information collected before the Act came into force (on January 1, 2004), fulfill the purposes for which it was collected, or
- (c) are otherwise permitted under the Act (see guideline 15, below).

15) Use of personal information without consent

15.1) Subsection 15(1) of the *PIPA* allows a counsellor to use personal information about a client without the consent of the client in prescribed circumstances.

15.2) The circumstances prescribed under section 15(1) of the *PIPA* that are applicable to a counsellor in private practice include:

- (a) the use is clearly in the interests of the client and consent cannot be obtained in a timely way;⁴

⁴ What is “timely” cannot be defined to fit all situations, but will depend on the particular circumstances, such as the urgency of the situation and the difficulty in obtaining consent.

- (b) the use is necessary for the medical treatment of the client and the client does not have the legal capacity to give consent;
 - (c) the personal information is collected by observation at a performance, a sports meet or a similar event
 - (i) at which the client voluntarily appears, and
 - (ii) that is open to the public;
 - (d) the personal information is available to the public from a source prescribed by regulation;
 - (e) the use is required or authorized by law;
 - (f) the personal information was disclosed to the counsellor under sections 18 to 22 of the Act (see guidelines 17 to 21, below);
 - (g) the personal information is needed in order to collect a debt owed by the client to the counsellor or for the counsellor to repay money owed to the client by the counsellor;
 - (h) the use is necessary to respond to an emergency that threatens the life, health or security of the client or another individual.
- 15.3) The circumstance described in guideline 15.2(b) above is unlikely to include a counselling session because it anticipates medical treatment being given to a client who is unable to give consent to that treatment, and that circumstance is likely to arise only in a medical emergency when the client is unconscious.
- 15.4) A counsellor may use personal information collected from or on behalf of another health professional or organization without the consent of the client to whom that information relates, if
- (a) the client consented to the use of the personal information by the other health professional or organization, and
 - (b) the personal information is used by the counsellor solely
 - (i) for the purposes for which the information was previously collected, and
 - (ii) to assist the counsellor to carry out work on behalf of the other health professional or organization.

DISCLOSURE OF PERSONAL INFORMATION

16) Limitations on disclosure of personal information

- 16.1) Section 17 of the *PIPA* provides that a counsellor may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances and that
- (a) fulfill the purposes that the counsellor discloses as per section 10(1) of the Act (see guideline 11.1, above),
 - (b) for information collected before the Act came into force, fulfill the purposes for which it was collected, or

(c) are otherwise permitted under the Act (see guideline 17, below).

17) Disclosure of personal information without consent

17.1) According to section 18(1) of the *PIPA*, a counsellor may only disclose personal information about a client without the consent of the client in prescribed circumstances.

17.2) The circumstances prescribed under section 18(1) of the *PIPA* that are applicable to a counsellor in private practice include:

- (a) the disclosure is clearly in the interests of the client and consent cannot be obtained in a timely way,
- (b) the disclosure is necessary for the medical treatment of the client and the client does not have the legal capacity to give consent,
- (c) it is reasonable to expect that the disclosure with the consent of the client would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,
- (d) the personal information is collected by observation at a performance, a sports meet or a similar event
 - (i) at which the client voluntarily appears, and
 - (ii) that is open to the public,
- (e) the personal information is available to the public from a source prescribed by regulation,
- (f) the disclosure is necessary in order to collect a debt owed by the client to the counsellor or for the counsellor to repay money owed to the client by the counsellor,
- (g) the personal information is disclosed in accordance with a provision of a treaty that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of British Columbia or Canada,
- (h) the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information,
- (i) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,
 - (i) to determine whether the offence has taken place, or
 - (ii) to prepare for the laying of a charge or the prosecution of the offence,
- (j) there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual⁵ and if notice of disclosure is mailed to the last known address of the client to whom the personal information relates,
- (k) the disclosure is for the purpose of contacting next of kin or a friend of an injured, ill or deceased individual,

⁵ See also guideline 18, below.

- (l) the disclosure is to a lawyer who is representing the counsellor in a civil or criminal proceeding,
- (m) the disclosure is to an archival institution if the collection of the personal information is reasonable for research or archival purposes,
- (n) the disclosure is required⁶ or authorized by law, or
- (o) the disclosure is in accordance with sections 19 to 22 of the Act (see guidelines 19 to 21, below)

17.3) The circumstance described in guideline 17.2(b) above is unlikely to include a counselling session because it anticipates medical treatment being given to a client who is unable to give consent to that treatment, and that circumstance is likely to arise only in a medical emergency when the client is unconscious.

17.4) Subsection 18(2) of the *PIPA* allows a counsellor to disclose personal information to another health professional or organization without consent of the client to whom that information relates, if

- (a) the client consented to the collection of the personal information by the counsellor, and
- (b) the personal information is disclosed to the other health professional or organization solely
 - (i) for the purposes for which the information was previously collected, and
 - (ii) to assist the counsellor to carry out work on behalf of the other health professional or organization.

17.5) A counsellor may also disclose personal information to another health professional or organization without consent of the client to whom the information relates, if the counsellor was authorized by section 12(2) of the *PIPA* to collect the personal information from or on behalf of the other health professional or organization.

18) Warning foreseeable victims of a client's violence

18.1) While the circumstance described in paragraph 18(1)(k) of the *PIPA* (see guideline 17.2(j), above) does not require a counsellor to give a warning, it does provide a statutory basis for the counsellor to later claim that a warning by way of a disclosure was justified and authorized in the circumstances.⁷

18.2) Once a counsellor gives a warning to the foreseeable victim of a client's violence or to the authorities, paragraph 18(1)(k) of the *PIPA* requires the counsellor to then notify the client by mail that a warning was given.

18.3) The content and timing of the warning notification to the client is not specified under the *PIPA*, but

⁶ See for example: 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.

⁷ For a discussion a counsellors duty to warn, see 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.

(a) the minimum content of such a warning would require the counsellor to advise the client that a warning was given to either the potential victim(s) or the authorities pursuant to paragraph 18(1)(k) of the Act, and

(b) depending on the circumstances, the counsellor should mail the notice within a week of when the warning was given.

18.4) If the counsellor believes that no notice should be given to the client that the counsellor acted pursuant to paragraph 18(1)(k) of the *PIPA* or that mailing such a notice should be delayed for more than one week, the counsellor should seek independent legal advice as to how to proceed in the particular circumstances.

19) Transfer of personal information in the sale of a counsellor's business

19.1) Subsection 20(1) of the *PIPA* defines the following terms, which also apply to this guideline:

"business transaction" to mean the purchase, sale, lease, merger or amalgamation or any other type of acquisition, disposal or financing of a counsellor or a portion of a counsellor or of any of the business or assets of a counsellor;

"party" to mean a person or another organization that proceeds with the business transaction.

19.2) Subsection 20(2) of the *PIPA* allows a counsellor to disclose personal information about his or her clients or employees without their consent, to a prospective party, if

(a) the personal information is necessary for the prospective party to determine whether to proceed with the business transaction, and

(b) the counsellor and prospective party have entered into an agreement that requires the prospective party to use or disclose the personal information solely for purposes related to the prospective business transaction.

19.3) If a counsellor proceeds with a business transaction, subsection 20(3) of the *PIPA* allows a counsellor to disclose, without consent, personal information of the client's clients and employees to a party on condition that

(a) the party must only use or disclose the personal information for the same purposes for which it was collected, used or disclosed by the counsellor,

(b) the disclosure is only of personal information that relates directly to the part of the counsellor or its business assets that is covered by the business transaction, and

(c) the clients or employees whose personal information is disclosed are notified by the counsellor that

(i) the business transaction has taken place, and

(ii) the personal information about them has been disclosed to the party.

19.4) Subsection 20(4) of the *PIPA* allows a prospective party to collect and use personal information without the consent of the of the client's clients and employees in the circumstances described in subsection 20(2) of the Act if the prospective party complies with the conditions applicable to that prospective party under that subsection.

19.5) Subsections 20(5), (6) and (8) of the *PIPA* places additional requirements on the person or organization who buys the counsellor's practice, depending on whether or not the transaction proceeds or is completed.

19.6) Subsection 20(7) of the *PIPA* states that section 20 of the Act does not authorize a counsellor to disclose personal information to a party or prospective party for purposes of a business transaction that does not involve substantial assets of the counsellor other than personal information.

20) Disclosure for research or statistical purposes

20.1) Subsection 21(1) of the *PIPA* allows a counsellor to disclose, without the consent of the client, personal information for a research purpose, including statistical research, but only if

- (a) the research purpose cannot be accomplished unless the personal information is provided in a personally identifiable form,
- (b) the disclosure is on condition that it will not be used to contact persons to ask them to participate in the research,
- (c) linkage of the personal information to other information is not harmful to the clients identified by the personal information and the benefits to be derived from the linkage are clearly in the public interest,
- (d) the counsellor to whom the personal information is to be disclosed has signed an agreement to comply with the following:
 - (i) the Act;
 - (ii) the policies and procedures relating to the confidentiality of personal information of the counsellor that collected the personal information;
 - (iii) security and confidentiality conditions;
 - (iv) a requirement to remove or destroy individual identifiers at the earliest reasonable opportunity;
 - (v) prohibition of any subsequent use or disclosure of that personal information in individually identifiable form without the express authorization of the counsellor that disclosed the personal information, and
- (e) it is impracticable for the counsellor to seek the consent of the client for the disclosure.

20.2) A counsellor cannot disclose personal information for market research purposes without the expressed consent of the client, which is best documented in writing.

21) Disclosure for archival or historical purposes

21.1) Section 22 of the *PIPA* allows a counsellor to disclose personal information for archival or historical purposes if

- (a) a reasonable person would not consider the personal information to be too sensitive to the client to be disclosed at the proposed time,
- (b) the disclosure is for historical research and is in accordance with section 21 of the Act,

- (c) the information is about someone who has been dead for 20 or more years, or
- (d) the information is in a record that has been in existence for 100 or more years.

ACCESS TO AND CORRECTION OF PERSONAL INFORMATION

22) Access to personal information

22.1) Subsection 23(1) of the *PIPA* provides that on request of a client but subject to subsection 23(2) of the Act (as set out below), a counsellor must provide the client with the following:

- (a) the client's personal information under the control of the counsellor;
- (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the counsellor;
- (c) the names of the clients and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the counsellor.

22.2) According to subsection 23(3) of the *PIPA*, a counsellor is not required to disclose personal information under subsection (1) to a client in prescribed circumstances.

22.3) The circumstances prescribed under subsection 23(3) of the *PIPA* that are most applicable to a counsellor in private practice include:

- (a) the personal information is protected by solicitor-client privilege;
- (b) the disclosure of the personal information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the counsellor;
- (c) the personal information was collected or created by a mediator or arbitrator in the conduct of a mediation or arbitration for which he or she was appointed to act
 - (i) under a collective agreement,
 - (ii) under an enactment, or
 - (iii) by a court.

22.4) Subsection 23(4) of the *PIPA* provides that counsellor must not disclose personal information under subsection 23(1) of the Act in the following circumstances:

- (a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of a client other than the client who made the request;
- (b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the client who made the request;⁸
- (c) the disclosure would reveal personal information about another individual;

⁸ For a discussion about when a counsellor could deny the client access to clinical information if such access could cause harm to the client or others, see Bryce, G. "A Client's Right To Access Clinical Records" part 1 @15:1 *Insights* at 13 & 14, and part 2 @ 15:2 *Insights* at 12, 24 & 25 (Spring and Summer of 2003). This article is also posted at the BCACC website.

(d) the disclosure would reveal the identity of a client who has provided personal information about another individual and the client providing the personal information does not consent to disclosure of his or her identity.

22.5) Subsection 23(5) of the *PIPA* provides that if a counsellor is able to remove or block-out information that is protected by solicitor-client privilege, confidential commercial information, or that could cause harm to the client or others, the counsellor must provide the client with access to the remaining personal information.

23) Right to request correction of personal information

23.1) Subsection 24(1) of the *PIPA* states that a client may request a counsellor to correct an error or omission in the personal information that is

- (a) about the client, and
- (b) under the control of the counsellor.

23.2) If a counsellor is satisfied on reasonable grounds that a client's correction request should be implemented, subsection 24(2) of the *PIPA* then requires a counsellor to

- (a) correct the personal information as soon as reasonably possible, and
- (b) send the corrected personal information to each organization to which the personal information was disclosed by the counsellor during the year before the date the correction was made.

23.3) If no correction is made under subsection 24(2) of the *PIPA*, the counsellor must annotate the personal information under his or her control with the correction that was requested by the client but not made by the counsellor.

23.4) When a counsellor is notified by another health professional or organization of a correction to personal information that professional or organization is acting on, the counsellor must correct the personal information under his or her control.

24) Requests for access or correction

24.1) Section 26 of the *PIPA* states that a client may request a counsellor to provide access to that client's information under section 23 of the Act (see guideline 19, above) or to request a correction to that client's information under section 24 of the Act (see guideline 23, above).

24.2) Section 27 of the *PIPA* requires a client to make a request for access or correction by submitting a request in writing that provides sufficient detail to enable the counsellor, with a reasonable effort, to identify the client and the personal information or correction being sought.

24.3) When a client makes a request under section 27 of the *PIPA*, they are defined thereafter as an applicant (by section 25 of the Act).

24.4) If a counsellor cannot reasonably identify either the client or the information being requested or the correction being sought, the counsellor should so advise the applicant (see also guidelines 27.1 and 28.1, below).

25) Duty to assist

25.1) Section 28 of the *PIPA* states that a counsellor must make a reasonable effort

- (a) to assist an applicant (i.e. requesting client),
- (b) to respond to an applicant's request as accurately and completely as reasonably possible, and
- (c) unless one of the exceptions listed in subsections 23(3) or (4) of the Act applies (see guidelines 22.2 to 22.4, above), to provide the applicant with
 - (i) the requested personal information, or
 - (ii) if the requested personal information cannot be reasonably provided, with a reasonable opportunity to examine the personal information.

26) Access by minors, their parents or guardians

26.1) Subject to guidelines 22.3 and 22.4 (re: denial of access request), a counsellor must allow a client under 19 years of age access to his or her personal information where, in the opinion of the counsellor, the minor client is capable of understanding that information.

26.2) Except where authorized by the client, a counsellor must not provide access to the personal information of a client who is under 19 years of age to the guardian or parent of the minor client where that information was provided without the consent of a parent or guardian in accordance with the requirements of section 15 of the *Infants Act*.⁹

27) Time limit for response

27.1) Subsection 29(1) of the *PIPA* states that a counsellor must respond to an applicant's request not later than

- (a) 30 business days after receiving the applicant's request, or
- (b) the end of an extended time period if the time period is extended under section 31 of the Act (see guideline 29, below).

27.2) According to subsections 29(2) and (3) of the *PIPA*, if

- (a) a counsellor asks the Privacy Commissioner under section 37 of the Act for authorization to disregard a client's access or correction request, or
- (b) an applicant asks the Commissioner under section 46 of the Act to review a fee estimate,

the 30 day time limit for responding to the client's request does not include the days between the date the request is made to the Commissioner through to the date the Commission makes a decision.

28) Content of a counsellor's response

28.1) Subsection 30(1) of the *PIPA* states that, if a counsellor refuses access to all or part of the personal information requested by the applicant, the counsellor must tell the applicant in the response

- (a) the reasons for the refusal and the provision of the Act on which the refusal is based (see for example, guidelines 22.2 to 22.4, above),

⁹ For a discussion on consent by children under the age of 19, see guideline 5.2, above.
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 Approved by the Board of Directors
 October 16, 2004

(b) that the applicant may ask for a review of the counsellor's decision by the Privacy Commissioner under section 47 of the Act within 30 days of being notified of the refusal.

SUGGESTED WORDING: *In response to your request of [DATE?], this is to advise you that I am refusing your request for access to your personal information because [GIVE REASON(S)], pursuant to section [CITE CORRECT NUMBER] of the Personal Information Protection Act. Under section 47 of the Act, you are entitled to appeal this decision to the Privacy Commissioner within 30 days of being notified of this refusal by writing to Office of the Information and Privacy Commissioner for BC, PO Box 9038, Stn. Prov. Govt., Victoria, B.C. V8W 9A4.*

29) Extending the time limit for response

29.1) Under subsection 31(1) of the *PIPA*, a counsellor may extend the time for responding to a client's request for up to an additional 30 days if

- (a) the applicant does not give enough detail to enable the counsellor to identify the personal information requested,
- (b) a large amount of personal information is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the counsellor's practice, or
- (c) more time is needed to consult with another health professional, organization or public body before the counsellor is able to decide whether or not to give the applicant access to a requested document.

29.2) Subsection 31(1) of the *PIPA* also allows a counsellor to apply to the Privacy Commissioner to request an extension period that is longer than the 30 day automatic extension.

29.3) If a counsellor extends the 30 day response time, subsection 31(2) of the *PIPA* requires the counsellor to then tell the applicant

- (a) the reason for the extension,
- (b) the time when a response from the counsellor can be expected, and
- (c) the right of the applicant to complain about the extension and request that an order be made by the Commissioner under paragraph 52(3)(b) of the Act.

SUGGESTED WORDING: *In response to your request of [DATE?] for access to your personal information, this is to advise you that I am extending the date that I will respond to your request by no more than an additional 30 days, because [GIVE REASON(S)]. You can expect a response from me by [DATE?]. Under section 52(3)(a) of the Act, you are entitled to appeal this decision to the Privacy Commissioner by writing to Office of the Information and Privacy Commissioner for BC, PO Box 9038, Stn. Prov. Govt., Victoria, B.C. V8W 9A4.*

30) Fees

30.1) Section 32(2) of the *PIPA* states that a counsellor may charge a client who makes a request for access under section 23 of the Act a minimal fee for access to the client's personal information.

30.2) As the *PIPA* does not permit a counsellor to charge a client a fee for responding to a correction request, a counsellor may not charge a client a fee to correct personal information. In most cases, the access fee should cover the counsellor's cost associated with any subsequent request to correct personal information.

30.3) Appendix A sets out the schedule of recommended fees that a counsellor may charge a client for specified services in providing the client access to or a copy of the client's personal information.

30.4) A counsellor may add or subtract services to this schedule, or adopt or amend these fees so long as the fees are reasonable.

30.5) A schedule of fees should be incorporated into the counsellor's policies and procedures, and brought to the attention of a client who is requesting access to or a copy of personal information.

31) Estimate and pre-payment of access fees

31.1) If a counsellor charges a client an access fee, section 32(3) of the *PIPA* states that the counsellor

(a) must give the applicant a written estimate of the fee before providing access, and

(b) may require the applicant to pay a deposit for all or part of the fee.

31.2) For example, if the counsellor has to pay to have the client's information returned from a file storage facility or to print-out a hard copy of a client's information stored in an electronic form, the counsellor should advise the client of those costs before proceeding.

31.3) If the client does not want to pay the counsellor's reasonable costs or to pay a deposit, the counsellor can refuse to proceed further and should so advise the client in accordance with guideline 28.1.

SUGGESTED WORDING: *Pursuant to section 32(3) of the PIPA, I estimate that the fee I am entitled to charge you for accessing your personal information will be [AMOUNT?]. Before I initiate the process to provide you with the requested access, I am entitled to require that you to pay to me a deposit for all or part of this fee. Therefore, please provide to me the amount of [AMOUNT?] as a deposit for this access fee. (Any remaining amount will be charged to you after you have accessed your personal information.) Please make your cheque payable to [NAME?] and do not postdate it. If I do not receive this authorized deposit within 30 days of this notice, I will conclude that you have abandoned your request for access to your personal information.*

CARE OF PERSONAL INFORMATION

32) Accuracy of personal information

32.1) Section 33 of the *PIPA* requires a counsellor to make a reasonable effort to ensure that personal information about a client that is collected by or on behalf of the counsellor is accurate and complete, if the personal information

- (a) is likely to be used by the counsellor to make a decision that affects the client to whom the personal information relates, or
- (b) is likely to be disclosed by the counsellor to another health professional or organization.

33) Protection of personal information

33.1) Section 34 of the *PIPA* requires a counsellor to protect personal information in the counsellor's custody or under his or her control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks.

33.2) To meet the requirements of section 34 of the *PIPA*, a counsellor should apply the following suggestions that are most applicable to his or her clinical practice:

- (a) an area or room where a client's personal information is stored should be locked or physically secured in some fashion so as to prevent unauthorized access;
- (b) filing cabinets should be locked;
- (c) only authorized persons should be permitted access to an area or room where a client's personal information is stored or where a fax machine is located;
- (d) the counsellor should maintain control over the storage, availability and use of all computer storage media (disks, tapes etc.), including back-up systems;
- (e) all access keys, cards, passwords etc., to computer systems or networks should be physically secure or subject to well-defined and strictly enforced security procedures, and passwords should be changed frequently and at irregular intervals;
- (f) only authorized personnel should have access to documentation about installations and computer systems;
- (g) terminals and personal computers used for entering or manipulating personal information should be positioned so that they cannot be seen by unauthorized personnel;
- (h) software programs should automatically blank the screen if the computer remains unused for a set period;
- (i) ensure that any computer interface with the internet or another computer does not increase the risk of unauthorized access to client personal information stored on that computer;
- (j) precautions should be taken to protect paper records and computer equipment and data from fire, deterioration and other hazards.

33.3) If the counsellor uses an off-site storage facility or has hired a company or individual to process, store or dispose of a client's personal information, the counsellor must ensure that the contract for this service requires that the facility, company or individual will

- (a) comply with the *PIPA* and ensure the confidentiality of the personal information during the process, storage or disposal, and
- (b) immediately advise the counsellor of any event that could compromise or has compromised the confidentiality or security of the personal information.

33.4) Counsellors should read *Review of the Storage and Disposal of Health Care Records* (1995), prepared by Dr. Shaun Peck, Office of the Provincial Health Officer, Ministry of Health Planning/Services.

34) Remediating a breach of security

34.1) A counsellor must take appropriate measures to remedy any unauthorized access, use, disclosure or disposal of personal information as soon as possible after the breach is discovered, including but not limited to

- (a) taking steps to recover the personal information or to ensure its disposal if it cannot be recovered,
- (b) taking steps to ensure that any remaining personal information is secured,
- (c) notifying
 - (i) anyone affected by the unauthorized access including clients and other health care providers,
 - (ii) the BCACC, and
 - (iii) law enforcement officials, where criminal action may have contributed to the unauthorized action, and
- (d) modifying existing security arrangements to prevent a re-occurrence of the unauthorized access.

35) Retaining personal information

35.1) Subsection 35(1) of the *PIPA* states that if a counsellor uses a client's personal information to make a decision that directly affects that client, the counsellor must retain that information for at least one year after using it so that the client has a reasonable opportunity to obtain access to it.

35.2) While the *PIPA* sets one year as the minimum retention period, a counsellor should retain an adult client's personal information for at least seven years from the date of the last recorded entry or seven years from the date a minor client turns 19 years of age.

36) Destruction of documents

36.1) Subsection 35(2) of the *PIPA* requires a counsellor to destroy documents containing a client's personal information, or remove the means by which the personal information can be associated with that client, as soon as it is reasonable to assume that

- (a) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and
- (b) retention is no longer necessary for legal or business purposes.

36.2) If a counsellor is not sure when he or she should destroy a destroy documents containing a client's personal information, the counsellor should seek independent legal advice.

37) Methods of destruction

37.1) The *PIPA* does not specify the method that a counsellor must employ to destroy a document containing a client's personal information, but the following are methods that a counsellor should consider:

- (a) destroying a physical record by using a shredder or by complete burning,
- (b) erasing information recorded or stored by electronic methods on tapes, disks or cassettes in a manner that ensures that the information cannot be reconstructed,
- (c) sending or returning the record to the client the information pertains to, or
- (d) returning the record to the other professional or organization who collected the information.

38) Counsellor ceasing to practice

38.1) A counsellor who ceases to practise for any reason must

- (a) dispose of personal information in accordance with this part,
- (b) notify the BCACC, and
- (c) provide the Association with a written summary of the steps he or she has taken to dispose of the personal information in compliance with the Act.

38.2) A counsellor must make appropriate arrangements to ensure that, in the event that the counsellor dies or becomes unable to practise for any reason and is unable to dispose of the personal information, the personal information will be safely and securely transferred to another counsellor.¹⁰

38.3) If a trustee is not named in counsellor's will, or if the named trustee is unwilling or unable to arrange for the transfer or disposal of documents that contain client personal information, the BCACC Board of Directors may appoint a counsellor to arrange for the transfer or disposal of the counsellor's documents that contain client personal information, either at the expense of the counsellor's estate or as the Directors may otherwise decide.

38.4) A counsellor who receives personal information transferred in accordance with this guideline, must notify the client(s) concerned of the transfer.

¹⁰ See also: Bryce, G. "What Should I Do When I Retire?", 13(1) *Insights* at 12 (Spring 2001). This article is also posted at the BCACC website.

COMPLAINTS

39) Responding to complaints

39.1) Paragraph 5(b) of the *PIPA* provides that if a client has a concern regarding the way a counsellor collects, uses or discloses that client's personal information, the client may express that complaint in writing or in person to the counsellor at the mailing address or by phone or fax (as noted in guideline 1.1, above).

39.2) On receipt of a complaint, the counsellor should make every reasonable effort to respond to and resolve the client's concern as permitted by law and, if requested by the client, provide a written explanation concerning the counsellors actions, and do so within 30 days of receipt of the complaint.

40) Complaints under BCACC Bylaws

40.1) A written explanation to a client given under guideline 39.2 must provide the client with details as to the client's right to file a formal complaint against the counsellor pursuant to the bylaws of the BCACC, as well as a mailing address for the Association, if the client is not satisfied with the counsellor's explanation.

SUGGESTED WORDING: *If you are not satisfied with the explanation that I have provided to you in this reply, you are entitled under the bylaws of my professional association to file a complaint against me. Your written complaint can be mailed to the BC Association of Clinical Counsellors (attention: Chair, Inquiry Committee), #14 - 2544 Dunlevy Street, Victoria, British Columbia V8R 5Z2. The BCACC policies and procedures regarding the investigation and resolution of complaints are posted at the Association's website (www.bc-counsellors.org) or can be obtained by contacting the Victoria office by mail.*

41) Complaints under the PIPA

41.1) Subsection 46(2) of the *PIPA* allows a client to also file a complaint against a counsellor to the Privacy Commissioner.

41.2) If the client has also filed a complaint against the counsellor with the BCACC, the Commissioner will generally defer to or delay acting on such a complaint until the client advises the Commissioner that he or she has completed the Association's complaint investigation and resolution process and remains unsatisfied with the outcome.

41.3) If the client could have filed a complaint against the counsellor with the BCACC but did not do so prior to filing a complaint with the Privacy Commissioner, the Commissioner may also defer to or delay acting on such a complaint until the client advises the Commissioner that he or she has completed the Association's complaint investigation and resolution process and remains unsatisfied with the outcome.

PROTECTION OF EMPLOYEES

42) Protection of employees

42.1) Section 54 of the PIPA states that a counsellor must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the counsellor, or deny that employee a benefit, because

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the commissioner that the counsellor or any other person has contravened or is about to contravene the Act,

(b) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene the Act,

(c) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of the Act, or

(d) the counsellor believes that an employee will do anything described in paragraph (a), (b) or (c).

PART TWO – MODEL PIPA POLICIES AND PROCEDURES

FULL LEGAL NAME OF COUNSELLOR
TITLE (if applicable)
NAME OF BUSINESS (if applicable)
MAILING ADDRESS (mandatory)
PHONE NUMBER (mandatory)
FAX NUMBER (optional)
EMAIL (optional)

Accountability

1. The counsellor named above is responsible for compliance with the *Personal Information Protection Act* and has adopted these policies and procedures in support of that legislation, including a complaint process.
2. The counsellor will comply with these policies and procedures and, in doing so, the counsellor will consider what a reasonable person would consider appropriate in similar circumstances.
3. The counsellor is responsible for all personal information under the counsellor's control, including personal information that is not in the counsellor's custody, such as personal information that may have been transferred to another professional or organization for review or processing.

Identify the purpose

4. Before or at the time personal information is collected, the counsellor will identify to the client the purpose(s) for which personal information is needed and how it will be used and disclosed.
5. The counsellor will ensure that the collection of personal information is necessary to fulfill the purpose(s) identified and that the purpose(s) is limited to what a reasonable person would consider appropriate in the circumstances.
6. The counsellor will inform the client either verbally or in writing, before or at the time of collection why the personal information is needed and how it will be used, and will answer the client's questions about the collection of personal information.
7. When using a client's personal information that has already been collected for a new purpose not previously identified, the counsellor will inform the client of the new purpose and obtain consent prior to its use.

Obtaining consent

8. The counsellor will obtain consent from the client whose personal information is collected, used or disclosed, and obtain that consent before or at the time of collection, as well as when a new use is identified.
9. When determining what form of consent will be used (e.g., written, verbal, implied, opt-in or opt-out), the counsellor will consider both the sensitivity of the personal information and what a reasonable person would expect and consider appropriate in the circumstances.

10. When obtaining expressed consent, the counsellor will inform the client of the purposes for the collection, use or disclosure of personal information in a manner that is clear and can be reasonably understood.
11. If a client is enrolled or covered under an insurance, pension, benefit or similar plan, the client is deemed under *PIPA* to consent to the collection, use or disclosure of personal information for the purpose of his or her enrollment and coverage under that plan, and in such situations the counsellor will identify the need for and scope of the collection, use or disclosure for the purposes of confirming entitlements and providing payments under the plan.
12. The counsellor will not obtain consent by deceptive means or by providing false or misleading information about how the personal information will be used or disclosed.
13. The counsellor will not make consent a condition for supplying a product or a service unless the collection, use or disclosure of the personal information is necessary to provide the product or service.
14. Should a client wish to withdraw consent, the counsellor will explain the likely consequences of withdrawing consent.
15. The counsellor will not prohibit a client from withdrawing consent to the collection, use or disclosure of personal information unless it would frustrate the performance of a legal obligation.

Collection

16. The counsellor will collect personal information for purposes that a reasonable person would consider appropriate in the circumstances, and will ensure the amount and type of personal information collected is necessary to fulfill the identified purposes.
17. Before or at the time of collection, the counsellor will comply with the previous two policies by informing the client of the purposes for collection and obtaining consent.
18. The counsellor will collect client personal information directly from the client, unless the *PIPA* or the client authorizes the collection of personal information from another source.

Use, disclosure and retention

19. The counsellor will use or disclose personal information only for the purpose(s) for which it was collected, unless the client consents to the new purpose, or the use or disclosure is otherwise authorized by the *PIPA*.
20. The counsellor will use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.
21. The counsellor will keep personal information only as long as necessary to fulfill the purpose(s) for which it was collected, but will keep personal information that is used to make a decision about an individual for at least one year after using it so the individual has a reasonable opportunity to obtain access to it.
22. The counsellor will destroy, erase or render anonymous personal information as soon as it is no longer serving the purpose for which it was collected and is no longer necessary for a legal or business purpose.

Accuracy

23. The counsellor will minimize the possibility of using incorrect or incomplete information when making a decision that affects a client or when disclosing a client's information to another professional or organization by making reasonable efforts to ensure that the personal information the counsellor collects is accurate and complete.

Safeguards

24. The counsellor will make reasonable security arrangements to protect personal information in its custody or under the counsellor's control, which will include physical measures, technical tools, and organizational controls where appropriate.
25. The counsellor will safeguard personal information from unauthorized access, collection, use, disclosure, copying, modification or disposal, and will protect personal information regardless of the format in which it is held (e.g., paper, electronic, audio, video).

Openness

26. The counsellor is the person who is accountable for these personal information policies and procedures, and is the person who can answer questions about the purposes for collecting personal information and the application of these policies and procedures.

Access and corrections

27. On request, the counsellor will provide a client with access to their personal information, an explanation of how the client's personal information is or has been used, and a list of any individual or organization to whom that personal information has been disclosed.
28. The counsellor will provide a copy of the information requested or a response that includes reasons for not providing access, subject to the exceptions set out in the PIPA, within 30 business days unless an extension of time is permitted under the Act.
29. The counsellor may charge the client the fees specified in Appendix A for the purposes of providing the client access to or a copy of the client's personal information, but will not charge the client a fee for correction requests.
30. If all or part of the requested information is refused, the counsellor will provide the applicant client with a response that provides the reasons and the provision of the PIPA on which the refusal is based, and information on how to request a review by the Privacy Commissioner.
31. On request, the counsellor will correct personal information that the counsellor verifies is inaccurate or incomplete.
32. If a correction is made, the counsellor will send a copy of the corrected personal information to each person or organization to which the incorrect or incomplete information was disclosed in the past year.
33. If no correction is made in response to an individual's request, the counsellor will annotate the personal information in (i.e., make a note) to indicate that a correction was requested but not made.

Complaint resolution

- 34. If a client has a concern for the manner in which a counsellor collects, uses or discloses that client's personal information, the client should so advise the counsellor of that concern in writing, or orally if the counsellor so agrees.
- 35. The counsellor will
 - (a) document the date the client's concern was received and promptly acknowledge receipt of the complaint;
 - (b) investigate the concern in a fair, impartial and confidential fashion, including clarifying any details with the client about the concern;
 - (c) if necessary, take appropriate measures to correct the counsellor's information handling policies or procedures;
 - (d) report back to the client in writing with the results of the investigation or corrective action;
 - (e) advise the client of the right to file a complaint with the BCACC.
- 36. If the client is not satisfied with the counsellor's response, the client may file a complaint against the counsellor with the BC Association of Clinical Counsellors, by writing to the Chair, BCACC Inquiry Committee, #14 - 2544 Dunlevy Street, Victoria, British Columbia V8R 5Z2.
- 37. If the client is not satisfied with the BCACC's response to the complaint, the client may file a further complaint against the counsellor with the BC Privacy Commissioner at P.P. Box #9038, Stn. Prov. Govt., Victoria, British Columbia V8W 9A4.

Adoption by the counsellor

I, _____ *[FULL LEGAL NAME OF COUNSELLOR]*, hereby declare that I will conduct my clinical practice in accordance with these policies and procedures, and the requirements of the *Personal Information Protection Act*.

_____ *[SIGNATURE]*

_____ *[DATE]*

APPENDIX A - SCHEDULE OF FEES

The following are suggested fees that a counsellor may charge a client for each of the specified services for providing the client access to or a copy of the client's personal information. A counsellor may add or subtract services listed in this schedule, or adopt or amend these suggested fees so long as the fees are reasonable. A schedule of fees should be incorporated into the counsellor's policies and procedures, and brought to the attention of a client who is requesting access to or a copy of personal information.

<i>Nature of service</i>	<i>Fee</i>
(a) for locating and retrieving a record	\$7.50 per 1/4 hour
(b) for producing a record manually	\$7.50 per 1/4 hour
(c) for producing a record from a machine readable record	\$16.50 per minute for cost of use of central mainframe processor and all locally attached devices, plus \$7.50 per 1/4 hour for developing a computer program to produce the record,
(d) for preparing a record for disclosure and handling a record	\$7.50 per 1/4 hour
(e) for shipping copies of copied records, etc.	the actual costs of shipping by the method chosen by client
(f) photocopies and computer printouts	\$0.25 per page (8.5" x 11", 8.5" x 14") or \$0.30 per page (11" x 17"),
(g) for copying records onto compact disk or floppy disks	\$10.00 per disk
(h) for copying records onto computer tapes	\$40.00 per tape, up to 2400 feet
(i) for copying records onto microfiche	\$10.00 per fiche
(j) 16 mm microfilm duplication	\$25.00 per roll
(k) 35 mm microfilm duplication	\$40.00 per roll
(l) microfilm to paper duplication	\$0.50 per page
(m) photographs - (colour or black and white)	\$5.00 to produce a negative, \$12.00 each for 16" x 20" print, \$9.00 each for 11" x 14" print, \$4.00 each for 8" x 10" print, and

	\$3.00 each for 5" x 7" print
(n) photographic print of textual, graphic or cartographic record (8" x 10" black and white)	\$12.50 each
(o) hard copy laser print, B/W, 300 dots/inch	\$0.25 each
(p) hard copy laser print, B/W, 1200 dots/inch	\$0.40 each
(q) hard copy laser print, colour	\$1.65 each
(r) photomechanical reproduction of 105 mm cartographic record/plan	\$3.00 each
(s) slide duplication	\$0.95 each
(t) audio cassette or compact disk duplication	\$10.00 plus \$7.00 per 1/4 hour of recording
(u) video cassette (1/4" or 8 mm) duplication	\$11.00 per 60 minute cassette plus \$7.00 per 1/4 hour of recording or \$20.00 per 120 minute cassette plus \$7 per 1/4 hour of recording
(v) video cassette (1/2") duplication	\$15.00 per cassette plus \$11.00 per 1/4 hour of recording
(w) video cassette (3/4") duplication	\$40.00 per cassette plus \$11.00 per 1/4 hour of recording