

# Ethical Guidelines for Ontario School Counsellors



“Leading the Way in  
Guidance & Career  
Education”

2010

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# Ethical Guidelines for Ontario School Counsellors

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“This Handbook is a useful and valid resource for counsellors; it contains material that addresses nearly all of the pertinent legislation with which a counsellor may have to deal. It is impossible in any Handbook such as this to cover every factual scenario or legal situation. Therefore, it is important to remember that one has to be aware of the actual wording of the acts and regulations and that it may be wise in the more complex factual situations to seek specific legal advice.”

MAURICE A. GREEN  
Barrister & Solicitor

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## Introduction

### Development

*Ethical Guidelines for Ontario School Counsellors* was developed by OSCA members for OSCA members. It was initiated during Jim Huffman's Presidency of OSCA in 1978. The project continues to receive enthusiastic support.

The Ontario Secondary School Teachers' Federation very kindly authorized OSCA's consultation with a lawyer, Maurice Green of the Green & Chercover legal firm, retained by the Federation. Through consultation with Mr. Green, the legal components of the Guidelines were developed.

Subsequent revisions to the original handbook have been updated to include ethical issues related to the following:

- a) Age-Based Legal Milestones for Youth
- b) Child abuse
- c) Child and Family Services Amendment Act, Ontario
- d) Choices Into Action, Guidance and Career Education Program Policy for Ontario Elementary and Secondary Schools, 1999
- e) Confidentiality
- f) Cyber-ethics
- g) Ethical Standards for the Teaching Profession – Ontario College of Teachers, 2000
- h) Freedom of Information and Protection of Privacy Act, R.S.O. 1990
- i) Leadership and Peer Support
- j) Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990
- k) Ontario Curriculum, Guidance and Career Education
- l) Ontario Curriculum, Program Planning and Assessment, 2000
- m) Ontario Secondary Schools, Program and Diploma Requirements, Grades 9 to 12, 1999
- n) Ontario Student Record (OSR) Guideline
- o) Professional Misconduct – Ontario College of Teachers Act, 1996
- p) Professional Misconduct Related to Sexual Abuse and Sexual Misconduct – Ontario College of Teachers, 2002
- q) Student Protection Act, 2002
- r) Support Workers in the Guidance Office
- s) Youth Criminal Justice Act
- t) Education Policy and Program Update to June 30, 2009

Every effort has been made to ensure the information in this publication is accurate. We regret any errors and appreciate comments, criticisms and concerns. Please call the OSCA Office at 705-292-6723 or email [osca@bellnet.ca](mailto:osca@bellnet.ca). The intent is to provide ongoing updates to this publication as required.



### Aims of the Handbook

The Guidelines have been developed to clarify Ontario school counsellors' understanding of their position in terms of the profession's ethical principles and the law.

Two secondary aims are worthy of note. First, the Guidelines will be of assistance in counsellor education programs. Secondly, it is intended to stimulate dialogue within the profession concerning ethical and legal matters.

Some might question the wisdom of combining an ethical casebook with discussions of legal matters. The inextricable relationship between ethics and the law became increasingly apparent to those involved in the development of the project. It is anticipated that the reader will come to share this opinion through use of the Guidelines.

### Use of the Handbook

1. For the purposes of this document, a "counsellor" is defined as a qualified teacher, with additional qualifications in Guidance (recognized by the Ontario College of Teachers), working in a guidance and career education capacity in an educational setting.
2. Under each ethical standard, cases illustrating ethical and unethical conduct are outlined. Each example is classified as acceptable (consistent with ethical principles) or unacceptable (inconsistent with ethical principles). It is anticipated that in further revisions of this Guideline, more examples will be added.
3. There has been no attempt to distinguish degrees of consistency or inconsistency within the ethical statements. For example, some of the incidents labelled unacceptable are examples of grossly unethical conduct, while others exemplify poor judgement.
4. Following each set of cases illustrating acceptable and unacceptable conduct in relation to the ethical standards, a brief explanation of related legal implications appears under the heading: Legally Speaking.

### Proviso

Nothing in the Guidelines is intended to provide legal advice but is simply informational regarding the manner in which the law might affect counsellors' actions. **Any specific legal problems must be addressed by a lawyer.**

### Acknowledgments

The OSCA Board of Directors would like to acknowledge the contribution of OSCA members to the development and revisions of these Guidelines. In addition we also appreciate the contribution made by the Ontario College of Teachers, the Elementary Teachers' Federation of Ontario, the Ontario English Catholic Teachers' Federation and the Ontario Secondary School Teachers' Federation, whose moral and financial support has made this publication possible. Thank you as well to Maurice Green and Susan Luft of Green and Chervercover for their legal expertise in the proofing of this document.





# ONTARIO SCHOOL COUNSELLORS' ASSOCIATION

## Code of Ethics

The Code of Ethics was adopted by the membership at the Annual General Meeting, November 12, 1976, and revised November 5, 1992. It was reviewed, revised, and approved for publication by the Executive and Board of Directors of the Ontario School Counsellors' Association, May, 2002.

### Preamble

The Ontario School Counsellors' Association is a professional organization whose membership is largely made up of school counsellors in both elementary and secondary panels, from Public, Catholic, Private school boards, and Education Authorities who are active participants in Guidance programs and curriculum across Ontario, in the training of guidance personnel, or in duties related to the delivery and supervision of Guidance and Career Education Programs.

It is recommended in the OSCA Handbook that members are required to have an acceptable level of professional training.

One obligation of membership is that members support the Mission Statement and Statement of Principles of the Association as articulated in the OSCA Handbook.

## Mission Statement

OSCA provides leadership and support in Guidance and Career Education for Guidance Teacher-Counsellors and students.

## Statement of Principles

OSCA will:

- Be a proactive professional organization
- Advocate for guidance and career education
- Represent its members
- Promote exemplary guidance and career education practices
- Build strong relationships
- Provide professional resources and training
- Provide leadership in guidance issues and trends

To this end, it is incumbent upon each member to maintain professional standards and to seek opportunities for continued professional growth. Besides providing leadership, and encouraging members to participate, OSCA will continue to provide a wide variety of opportunities for counsellors to participate in ongoing professional growth.

Adherence to the OSCA Code of Ethics is recommended to OSCA members. All counsellors must adhere to the ethical and legal requirements of those acts and regulations from the Ontario College of Teachers and the Ministry of Education which govern teachers and counsellors. Some of these are referenced throughout these Guidelines but especially in the Appendices at the conclusion of the publication.



## Ethical Principles, Illustrative Cases, and Legal Comments

### Section A: Professional Competence and Conduct

- 1. Counsellors are expected to seek opportunities to continue their own professional growth and to work towards the improvement of their profession. Certified teachers are professionals. It is the responsibility of all professionals to make a strong commitment to ongoing professional development. Counsellors should participate in professional development opportunities to enhance their professional knowledge and skills. Counsellors should continue to develop their professional portfolio. Counsellors should maintain the practices of exchanging ideas, networking and sharing resources.**

#### Acceptable Cases

- On becoming aware that a colleague, who counsels similar grade levels, does not feel competent in handling teacher-pupil problems, a counsellor agrees to share expertise with her associate. She provides suggestions, encouragement and constructive criticism.
- A counsellor initiates a peer-helping program in his school. Finding it to be effective, he offers to share information about the program with other schools.

(Please see *Leadership and Peer Support Programs*, page 26.)

- A counsellor, who has a Guidance Specialist Certificate, undertakes a survey of similarly qualified colleagues in her District School Board to determine interest in a summer course concerning appropriate internet resources for use in the Career Studies credit course. She submits the results to the OSCA Board of Directors for action.
- In an effort to increase the public's awareness of the role of a counsellor in a K to 8 school, an elementary school counsellor develops a power point presentation on this topic. Its quality is such that he agrees to make it available to counsellors in other boards and submits an article to OSCA's professional journal, *OSCA Today*, regarding the content and success of the presentation.
- On learning that OSCA is offering an opportunity to become a trainer for the Real Game Series, a counsellor agrees to participate knowing that she must be prepared to offer training in her own District School Board for her colleagues.
- In an effort to maintain a current portfolio of professional development activities, an elementary counsellor uses the excellent resource, *Professional Portfolio, A Working Guide*, found on the website of the Elementary Teachers' Federation of Ontario (<http://www.etfo.on.ca>).

#### Unacceptable Cases

- A counsellor whose responsibilities include leadership of the Guidance Department rarely chooses to attend her District School Board's Guidance Heads' meetings. She claims that she keeps abreast of developments through reading the minutes and "handouts" which she occasionally receives in the school courier.
- A counsellor contends that he is capable of effective Guidance work on the basis of his training and continuing to keep up-to-date with his reading. He neither belongs to the Ontario School Counsellors' Association nor participates in any of their conferences or training initiatives. He does not belong to any other national, provincial or local professional counselling organization.

#### Legally Speaking

In its published booklet, *Standards of Practice for the Teaching Profession*, under the subtitle, *Ongoing Professional Learning*, the Ontario College of Teachers states:

##### 1. Teacher learning and student learning

Members of the Ontario College of Teachers:

- understand that teacher learning is directly related to student learning
- act as role models who demonstrate lifelong learning
- engage in a variety of learning opportunities both individual and collaborative that are integrated into practice for the benefit of student learning

##### 2. Professional growth

Members of the Ontario College of Teachers:

- recognize that continuous professional growth is an integral part of teaching
- recognize that teaching and professional growth are influenced by personal, social, and educational contexts
- understand that teaching practice is enhanced by many forms of knowledge, ways of knowing, and ways to access that knowledge
- anticipate and plan the kinds of learning they will need to respond to a variety of educational contexts

##### 3. Improving practice

Members of the Ontario College of Teachers:

- demonstrate a commitment to continued professional growth
- know that professional learning is most effective when it is job-embedded, relevant and supported by others within the educational community

- c) reflect on their practice and learn from experience
- d) draw on and contribute, where appropriate, to various forms of educational research
- e) collaborate with colleagues to improve practice

**2. Counsellors expect ethical behaviour from their professional associates; counsellors will attempt to rectify unethical behaviour on the part of their associates and will assist colleagues to observe ethical practices related to the work of the counsellor.**

**Every district school board shall ensure that every teacher has a learning plan each year that includes the teacher's professional growth objectives, proposed action plan, and timelines for a achieving those objectives. A teacher's learning plan must be prepared by the teacher in consultation with the appropriate principle (Education Act, Regulation, 98-02).**

**Acceptable Cases**

- a) An inexperienced counsellor is in a quandary concerning the proper course of action to take after having a student admit to the commission of a crime. She approaches a colleague who suggests a meeting with the Principal to help to clarify the ethical and legal implications of the situation.
- b) Every year, the Chair of the Guidance Department incorporates into his department meetings a review of OSCA's Code of Ethics. The department's policies and procedures are discussed in relation to the ethical standards.
- c) On an evaluation survey completed by students, there is a significant degree of scepticism registered concerning the confidentiality honoured by the school's counsellors. The Guidance Head holds a department meeting concerning this state of affairs and arranges to speak to the entire school staff to clarify policy.
- d) A counsellor, seated at a crowded staff room table during lunch, is confronted by a teacher who says, "I understand John Smith was at an interview with you during my class. What did he have to say?" The counsellor diplomatically informs the teacher that the staff room is not the suitable place to discuss this and invites the teacher to see her in her office in order to share any appropriate information which is permissible, under the circumstances, to divulge. (*Please see Confidentiality, page 22.*)
- e) On becoming aware that a colleague is using a standardized test for which he lacks the proper background, a counsellor suggests that he assist, since he has been formally trained in the administration and interpretation of the test in question.

**Unacceptable Cases**

- a) A counsellor, at a staff meeting, requests that staff members co-operate with counsellors in maintaining confidentiality. She had previously discussed the need for such action with the Guidance Head who had agreed that the need existed.

The latter, however, does not support the counsellor at the staff meeting due to a fear of alienating some staff members.

- b) Mrs. C. is a half-time Guidance counsellor and half-time Mathematics teacher who has been assigned to the Guidance Department by the Principal. She has no Guidance qualifications. She is a popular staff member. The Guidance Head realizes that Mrs. C. spends a significant amount of "Guidance" time marking Mathematics tests. However, he says nothing, as he does not want to jeopardize losing her as a counsellor since he thinks she improves rapport between his department and the rest of the staff.

**Legally Speaking**

In the event of a civil or criminal action against a counsellor, the Head of Guidance may be implicated if the latter may be proven to have been aware of an alleged impropriety and failed to take appropriate action.

According to Federation bylaws, a copy of any critical report must be forwarded to the teacher/counsellor whose behaviour is being criticized. A member rendering criticism is urged to contact the other member personally.

The only exception to this rule occurs in the unlikely event that a teacher must report professional misconduct of a colleague related to sexual abuse and/or sexual misconduct. (*See Student Protection Act, 2002, Appendix F.*)

If a student admits to having committed a crime, the wisest course of action seems to be to ensure that the student meets with a lawyer as soon as possible.

The question of whether or not to violate confidentiality is an agonizing one for counsellors who learn, during a counselling session, that their client has committed a criminal act. Such charges as being an "accessory after the fact" or "aiding and abetting" a criminal are possible, though unlikely, consequences of maintaining confidentiality. Generally, counsellors must base their decisions on the relative harm or benefit accruing to society versus that accruing to their clients. (*See Confidentiality, page 22.*)

**3. Counsellors shall not indicate that they have professional qualifications beyond those they possess, and should attempt to correct misrepresentation or misunderstanding of their qualifications by others.**

**Acceptable Cases**

- a) The local newspaper misrepresents a counsellor's credentials. He therefore informs the editor of the mistake and requests that a correction be printed.
- b) Whenever a counsellor is mistakenly labelled as a psychologist, either by student or parents, she makes a point of explaining her role so as to clarify the distinction.
- c) After divulging a sensitive, personal problem, a student asks the counsellor's advice concerning some legal implications. The counsellor assists the student in obtaining valid legal information.



### Unacceptable Cases

- a) A teacher, having completed Part 1 of the Guidance Additional Qualification course, leads her counselees in therapeutic sessions. Despite being impressed with her terminology, they are confused and frightened by what she is telling them.
- b) A counsellor exaggerates his qualifications in assuring a student that he is sufficiently qualified to help with any social or emotional problem.
- c) A mother of a counsellee contacts her daughter's Guidance counsellor in order to request family counselling. It is evident that the parent assumes that Guidance counsellors are trained to assist directly with serious family problems. Although the counsellor has had no training specifically in family counselling, she says nothing to dispel the assumption. She agrees to counsel the family herself, deciding not to refer the family to the appropriate District School Board social worker or community agency.

### Legally Speaking

It is important that counsellors attempt to ensure that perceptions of clients are accurate with regard to their role and qualifications. The utilization of therapeutic techniques in which counsellors are not formally trained may be the basis of civil liability suits. Unless the District School Board has been made aware that unorthodox practices are in use, the counsellor would be jeopardizing the employment relationship.

#### **4. Counsellors, as employees of a school or other institution, accept policies and principles of the institution as a condition of employment (for example, the IPRC process), unless they conflict with the professional standards and ethics of the Ontario College of Teachers, the Ministry of Education and/or the various Teacher Federations.**

### Acceptable Cases

- a) Before accepting a Guidance position, a counsellor raises several key ethical concerns with the school's administration to determine whether school policy is in basic accord with his ethical responsibilities as a counsellor and teacher of Guidance and Career Education credit courses, e.g. procedure for reporting a suspected child abuse case. (*See Child and Family Services Amendment Act, Appendix A.*)
- b) A counsellor, new to a school, finds that scores from a recognized and reputable test administered individually, on occasion, by qualified counsellors have traditionally not been conveyed to students or parents. With the permission of her Guidance Head, she suggests to the Principal some reasons for this situation to be changed. Her views are approved and a procedure for the explanation of scores is developed.
- c) A Guidance counsellor accepts responsibility for leadership of a Guidance Department at a secondary school in which the counsellor-student ratio has been approximately 1:600 for a number of years. Convinced that such staffing does not

conform to the funding formula as outlined by the Ministry of Education and is inappropriate for proper professional service, he contacts OSCA for assistance in implementing a change. Since several schools in his jurisdiction have counsellor-student ratios of 1:350, efforts are focused on the staff and administration of the school. Gradually, the priority given the Guidance Department in terms of staffing improves.

- d) A counsellor who discovers that there is no written school Guidance Program Plan in existence, offers assistance to work with the Guidance Head, the Administration and other subject leaders to prepare one that meets the requirements of Ministry Guidelines.

### Unacceptable Cases

- a) When criticism of school rules is expressed by students and parents, a counsellor frequently states that the Principal makes all the rules and that he is not in agreement with a number of them. In this way, the counsellor minimizes hostility directed at him.
- b) The Administration in a school has traditionally used Guidance counsellors for a great deal of assistance with disciplinary and administrative tasks. Counsellors complain among themselves, but fail to confront the Administration with their desire to fulfil the role as outlined in Choices Into Action, the Guidance and Career Education Program Policy for Ontario Elementary and Secondary Schools, 1999.
- c) The Vice-Principal of a school often asks counsellors for information obtained in counselling sessions. On a number of occasions, he divulges information to parents in the interest of school/home cooperation. The counsellors continue to give the requested information in order to maintain cordial relations with the Vice-Principal.

### Legally Speaking

It is highly unlikely that a District School Board's policy would be illegal. However, the fashion in which a particular school Administration interprets the policy might, conceivably, be inconsistent with an aspect of the legal system. Counsellors should not cooperate with such policies. Obviously, such action would not lead to the counsellors' legal vulnerability.

#### **5. Counsellors shall offer professional services only through the context of a professional relationship. Except through the medium of a recognized agency, it would be unethical practice to offer the services of counselling or testing through the mail, newspaper or magazine or other remote means of communication such as telephone, radio, television or internet. (Please see *Cyber-Ethics*, page 25.)**

### Acceptable Cases

- a) A counsellor is offered time by a local radio station to counsel persons who phone in regarding school-related problems. The station makes it clear that the intent would be to offer more than the dispensing of information and that

actual counselling, in the proper sense of the term, would be occurring. The counsellor explains the ethical implications of such a program and her resultant inability to accept the offer. She does, however, express a willingness to provide information and general guidance for callers regarding education, career development and community resources.

- b) A long-time friend of a counsellor asks him for advice regarding her son who does not attend the counsellor's school. The advice requested pertains to course selection as well as some specific assistance with career planning. The counsellor provides some general information, but encourages his friend to discuss her questions with the counsellor at her son's school.
- c) A counsellor realizes that his office is arranged in such a way as to provide absolute privacy for clients. However, in light of sexual harassment and physical/sexual abuse charges increasingly occurring, he decides to protect himself. He arranges with the principal to have glass installed in his office door, and rearranges the furniture so that he can be viewed at all times from outside the office while the client cannot be fully viewed from outside. (*See Professional Advisory: Professional Misconduct Related to Sexual Abuse and Sexual Misconduct, Ontario College of Teachers, Appendix E.*)

#### Unacceptable Cases

- a) A Students' Council group arranges for regular space in a newspaper to be allotted for responses by a counsellor to letters from students who are experiencing difficulties in school. The counsellor who is approached agrees to actually advise appropriate courses of action for individual students. Thus, the counsellor has agreed to use this context for individual counselling.
- b) In an effort to assist members of the community who might be intimidated by the school setting, a counsellor places an ad in the local paper offering the opportunity to complete an interest inventory and aptitude test through the mail. It is made clear that scoring and interpretation would be done by the counsellor and the results would be mailed to the person if that was his/her wish.

#### Legally Speaking

Counsellors who choose to operate outside the bounds of a professional school relationship increase the possibility of their being found individually liable.

Those not functioning through the medium of a recognized agency and using remote means of communication are in a "double-jeopardy" situation. This is intended to mean that such a counsellor would be vulnerable, not only because of independent status with no support services, but also because of the non-immediate means of communication which would tend to hinder effective communication.

The counsellor is not breaching any obligation of confidentiality by re-arranging the office furniture so as to protect against unjustified accusations of sexual harassment/assault.

Doug Wilson, as Registrar of the College of Teachers in 2003, indicated that the Professional Advisory, Professional Misconduct Related to Sexual Abuse and Sexual Misconduct, Ontario College of Teachers, is intended for all members of the College of Teachers and was not intended to single out Guidance counsellors or to change the way they work with students. Counsellors often work with individual students, and discussions may well be of an emotional and confidential nature. Guidance counsellors need to be aware that the Advisory exists and should continue to exercise good judgement in working with individual students in such situations. (*See Advisory, Appendix E.*)

#### **6. Counsellors with recognized competencies may establish career counselling/consultation practices outside school hours, but must not charge fees to students or parents from their own school.**

##### Acceptable Cases

- a) A counsellor agrees to work evenings with a private career counselling service on a fee for service basis. As part of the agreement, the counsellor will not refer clients from his/her home school to the service and asks his colleagues to refrain from the same practice.
- b) Counsellors in a small rural community identify a need for additional family services. They lobby a reputable agency from a nearby community to establish a family counselling service that operates weeknights and weekends.

##### Unacceptable Cases

- a) A student with severe personal difficulties is making increased demands on a counsellor's time. Since the counsellor needs time to see other students, and is teaching two Career Studies credit course sections, she suggests that the student see her in the evening at her private practice. She sends the student a bill for \$150.00.
- b) A counsellor is invited to work with a government agency in the development of new career education resources. Meetings are usually held during school hours. After several weeks the counsellor is offered, and accepts, the opportunity to present workshops about these resources during school hours. He accepts an hourly wage for each workshop.

#### Legally Speaking

The counsellor should ensure that there is no District School Board policy preventing the practice outside of school hours in relation to any pupil of the Board, regardless of the school attended. If none exists the counsellor may proceed accordingly. However, it would be unethical to charge fees to parents/students from the counsellor's home school.

#### **7. Counsellors shall have a clear understanding of the Ministry of Education Curriculum and Policy Documents:**

**Guidance and Career Education, Grades 9 to 12; Program Planning and Assessment, Grades 9 to 12; and Choices Into Action, Guidance and Career Education Program Policy for Ontario Elementary and Secondary Schools, 1999.**

#### Acceptable Cases

- a) A Guidance Co-ordinator from a large District School Board makes special arrangements for all Guidance Counsellors within his Board to have in-service from an Education Officer at the Ministry of Education on Ontario Secondary Schools, Curriculum Documents for Guidance and Career Education and Choices Into Action. Attendance at the rotating sessions is excellent. The Co-ordinator plans future sessions to support understanding and implementation and to determine how well the process of implementation is proceeding.
- b) A teacher, assigned the responsibility for teaching sections of Career Studies feels overwhelmed by the task and approaches the Head of Guidance. The Head of Guidance encourages the teacher to continue on-line Additional Guidance Qualifications courses, and to join the Ontario School Counsellors' Association as part of the school membership. The Head of Guidance agrees, as well, to mentor the teacher, especially in the area of Policy Documents regarding Program Planning and Assessment.
- c) A Head of Guidance is concerned about the lack of implementation of Choices Into Action in his new school. He approaches the Principal and together they make decisions to begin the process.

#### Unacceptable Case

The person in charge of Student Services of a small rural school chooses only those parts of the new Ministry documents that he thinks are worthwhile implementing. He isn't worried since he feels that no one will notice.

#### Legally Speaking

A Counsellor who does not have a clear understanding of the Ministry of Education Curriculum and Policy Documents risks exposing himself or herself to charges of incompetence. The resulting employment repercussions may include a College of Teachers complaint which may be filed by a District School Board, a parent or a student. In some cases there may also be a potential civil liability.

**8. Qualified Guidance counsellors provide leadership and assist in the process of delivery, co-ordination and implementation of the school's Guidance and Career Education Program Plan.**

#### Acceptable Case

In an effort to begin the process of creating and implementing a Guidance Program Plan, the Head of Guidance meets with

the Principal. Together they review the current Guidance Plan, Ministry Policy and School Board Documents to assist them in their task. At the end of several productive meetings, they agree to approach key stakeholders within their school community to help them proceed.

#### Unacceptable Case

The Head of Guidance of a large secondary school refuses to take part in the planning of the Guidance program plan suggesting that it is more important for him to be in the Guidance Office catching up on phone calls to parents. Besides, he believes that the plan is the sole responsibility of the Principal.

#### Legally Speaking

A counsellor who fails to provide leadership and assist in the process of delivery, co-ordination and implementation of the school's Guidance and Career Education Program Plan may be subject to allegations of incompetence. Again, as noted above, allegations of incompetence may have an employment impact and there is a potential risk of action by the Ontario College of Teachers.

**9. Qualified Guidance counsellors provide instruction in Guidance and Career Education through the delivery of Guidance credit courses.**

#### Acceptable Cases

- a) The Head of Student Services in an urban school is concerned about who the Principal will assign to teach the compulsory grade 10, Career Studies course. He makes an appointment with the Principal to discuss the issue, and indicates that both he and his colleagues (all with Guidance qualifications) in the department wish to teach at least one section each. He lobbies the Principal to assign qualified Guidance personnel from other departments who he has identified as interested in, and well suited for the teaching assignment.
- b) As teachers of Guidance and Career Education credit courses, members of a Guidance department set as a primary goal to help students become self-directed, lifelong learners, this in accordance with Ministry Policy and the fundamental aim of the guidance and career education curriculum.

#### Unacceptable Case

A Head of Guidance fails to lobby for the inclusion of all Guidance Credit courses on course selection sheets presented to students in his school each year.

#### Legally Speaking

As noted previously, there is always a potential charge of incompetence when a member fails to follow the guidelines set out herein.



## Ethical Principles, Illustrative Cases, and Legal Comments

### Section B: Counsellor-Counselee Relationship

#### 1. Counsellors are obliged to respect the integrity and promote the welfare of the counselees with whom they are working. (e.g., through the development and implementation of the Annual Education Plan.)

##### Acceptable Cases

- a) A pamphlet is mailed to the Guidance Office inviting students to attend a Conference related to the prevention of Sexual Abuse. A covering letter requests that the event be advertised in the school. The organization is telephoned. An agenda is supplied as well as a detailed account of what role the students would play in the conference and what age group would benefit from the experience. References are provided by the conference planners. District School Board Social Work Services is notified. The conference is advertised to the students in the school.
- b) A counsellor learns that a counselee who is not doing well academically has serious home problems. The student's father is an alcoholic and money is scarce for the family. With the permission of the counselee, the counsellor makes a commitment to support the counselee in the school setting, to explain relevant aspects of the situation to his teachers and to put him in touch with relevant community service agencies.
- c) A student, new to the area, comes to register at a high school. On the basis of transcripts brought by the student, the counsellor considers another school's program to be more suitable. After explaining her rationale to the student and his parents and obtaining their consent, she arranges an appointment for the student and parents at the appropriate school and ensures that the other school has the necessary preliminary information.
- d) Knowing that an Annual Education Plan will help students take responsibility for their education, a guidance counsellor encourages her counselees to consider all post secondary destinations carefully. In the planning process, students set short and long-term goals, evaluate the achievement of those goals and review their academic progress.
- e) A Guidance Specialist has developed a series of lessons about the development and maintenance of the career portfolio. He is assisting the Program Advisory Team to integrate this approach to portfolios into the Guidance Program Plan.
- f) A counsellor has been working, for a period of time, with a student who has become very dependent on her. The counsellor believes the student has gained enough skills to function independently and takes steps to terminate the relationship humanely by referring the student to the appropriate social agency.

##### Unacceptable Cases

- a) A young woman comes to a counsellor concerning a problem with her ex-boyfriend. To resolve the problem, the counsellor is convinced that the two should be brought together to discuss the matter. The girl does not agree. Despite her objections, the counsellor has the boy come to the office with the girl still present.
- b) A counsellor is assigned students taking Applied courses as well as students taking mainly Academic courses. She treats the former in a perfunctory manner, justifying her approach with the contention that their career possibilities are much more limited than those of students taking mainly Academic courses.
- c) A counsellor perceives that a child's diet is inadequate and begins to take him home for lunch. The counsellor gradually assumes the role of a guardian thus blocking access to appropriate agencies in the community who could help the child.

##### Legally Speaking

There have been instances of counsellors losing positions or being transferred on the basis of incidents with students occurring in the context of what had supposedly become personal, in some cases, romantic, relationships. As aspects of the counselling relationship vary from those normally associated with one which is professional and proper, the counsellor increases the risk that the nature of the relationship will be perceived as personal rather than professional. Thus, the counsellor may well be considered to be breaching rather than respecting the student's integrity. (*See Professional Advisory, Ontario College of Teachers, Appendix E.*)

The second half of this ethical principle – "promote the welfare of the counselees" – is fraught with legal implications. Civil actions based on charges of negligence or liability may stem from such allegations as improper placement of a student or incorrect information being conveyed by counsellors. Since there are no precedents of such actions in Ontario, it can only be stated that the possibilities exist. On the other hand, it should be stated that the success of such actions would be questionable indeed.

#### 2. In group situations, particularly those oriented to self-understanding or growth, the counsellor is obligated to make clear to the group members the purposes, goals, techniques, rules, and limitations of the procedures



**that may affect the continuance of the relationship. The counsellor will attempt to protect individuals from physical and/or psychological trauma which might result from group interaction.**

#### Acceptable Cases

- The counsellor ensures that all the students in the group with which he is working are compatible in relation to the task. They have expressed a willingness to share with each other, and, in various ways, to assist each other to resolve difficulties.
- Some members want their group to try some dynamic and intensive techniques with which they and the counsellor are not very familiar. The counsellor, who is not qualified in any of these techniques, considers the exercises to be potentially dangerous and ensures that they are not used.
- In the initial stages, group members break certain rules that are extremely important in group counselling, such as confidentiality. The counsellor repeats the rules and re-emphasizes their importance. Members come to realize that the effectiveness and continuation of the group depend upon their adherence to these basic rules.
- To prepare for peer helping training sessions, the counsellor explains the purposes and goals to everyone involved and gives each student a printed summary of the program. (See *Leadership and Peer Support Programs*, page 26.)

#### Unacceptable Cases

- The counsellor is working with a group on a special program for building self-esteem. Despite the counsellor's initial outline of guidelines and general procedures, one member of the group is very dominant and sets up her own procedure. The new process is contrary to the nature and purpose of the program. The counsellor is intimidated by the dominant member, fails to confront her and allows the group to continue.
- The counsellor initially fails to make clear to the group the importance of attending every session. The attendance of many members becomes irregular, which leads to repetition of material. Several members who attend regularly become dissatisfied and decide to leave the group. The group fails as a result of a key rule not being stressed and enforced.
- A counsellor is aware that a member of the group is relatively sensitive and insecure. He does not intervene when other group members focus criticism and some hostility on the member. The individual becomes silent in the group and appears to lose confidence in himself. The counsellor tries to counsel him individually following the session, but the student is unwilling to discuss the situation.

#### Legally Speaking

In the event of a student being harmed in group counselling, the potential legal consequence could be a negligence suit launched by the parent, or the student if he/she is over 18. Obviously, proper training in group counselling would minimize both the potential for negative outcomes as well as

legal actions resulting from such outcomes. It is important that counsellors ensure that their principals or school boards know about and approve of their group counselling programs.

Counsellors should discuss with group members their responsibility for maintaining the confidentiality of information disclosed in the group. Counsellors must be aware that they cannot be held accountable if group participants breach their confidentiality obligations.

**3. In providing orientation to prospective group participants, especially when the emphasis is on self-understanding and growth through self-disclosure, the counsellor is responsible for ensuring that the purposes of the group situation are appropriate to the needs of the counsellee(s).**

#### Acceptable Cases

- In order to ensure that a group counselling program is suitable for the participants, the counsellor responsible interviews prospective participants to determine their suitability for the program.
- A counsellor, realizing that a prospective group counselling participant has ulterior motives for being in the group, speaks to the student concerning the need to exclude her from the group.
- A counsellor working with a new group gives each participant a printed outline of the aims of the group program. He proceeds to discuss the validity of the aims in conjunction with their needs.
- Perceiving a need for group counselling, a counsellor arranges for interested students to meet. She then asks the group about specific needs in this area of concern. Together, they plan the objectives and the format of the group sessions.

#### Unacceptable Cases

- A senior student, working as a volunteer with a group of Grade 10 students experiencing academic difficulties, wants to encourage self-disclosure of a personal nature in his group. On the basis of the senior student's judgment, the counsellor approves, even though the students involved were not selected with this new aspect of the program in mind.
- In starting a new group-counselling program to assist students finding it difficult to express themselves in class, the counsellor does not explain the emphasis which will be placed on self-disclosure during the program. Participants were obtained by seeking referrals from teachers. Orientation consists primarily of claiming that participation will help to increase students' marks.

#### Legally Speaking

In ensuring that group situations are appropriate to the needs of the counsellee(s), the counsellor should be aware of potential allegations of incompetence. As noted previously, there is an employment impact as well as the possibility of charges from the College of Teachers. In addition, there may be a possibility



of civil litigation exposure, especially if one of the students or the group suffers damage.

**4. When counsellors become aware of information which indicates that there is imminent physical and/or emotional danger to the counsellee or others, they must report the fact to the appropriate authorities. Counsellors must be familiar with the Child and Family Services Amendment Act, (see Appendix A), and must continue to report subsequent information should it become apparent. The counsellee should be informed of the obligation by the counsellor to report, as soon as possible, and preferably before any disclosure takes place. (See Confidentiality, page 22)**

#### Acceptable Cases

- a) An 18 year-old student who lives alone, tells his counsellor that he has had occasional, intense, suicidal urges. After discussion, the counsellor is convinced that there is a definite danger that the student will harm himself. She persuades him to seek help from the Crisis Centre of the city's hospital since she trusts the capability of their personnel with problems of this type. She arranges an immediate appointment for the student and follows up to ensure that the appointment is kept.
- b) A 15 year-old foreign exchange student reveals to a counsellor that she has been inappropriately touched by the man who is her "host" in Canada. The student is in Canada alone, and has no friends or family to turn to. The student does not want the police involved but the Guidance counsellor explains that there is no legal alternative but to report the incident to the police and to the Children's Aid Society. The counsellor makes the calls immediately, following the law and her District School Board's protocol for such reporting.
- c) A student enters the counsellor's office and begins to talk in such a fashion that it is obvious she is out of touch with reality. The counsellor keeps the student calm and, as soon as possible, contacts the parents. Upon the parents' arrival, the counsellor explains the situation fully and outlines some of the appropriate community resources available to help.

#### Unacceptable Cases

- a) Several teachers express concern to an elementary counsellor regarding an 11 year-old student's bizarre behaviour and preoccupation with death. The counsellor sees the student in order to investigate the concern. Although he is convinced that there is substance to the suspicions that the student requires psychiatric help, he leaves the decision regarding future counselling to the student. Neither the parents nor the administration are notified.
- b) During a counselling session, a boy threatens to attack the Vice-Principal. Although there has been a history of such outbursts in the boy's background, in accord with the student's wishes, the counsellor tells no one.

- c) A counsellor notices bruises on the arms of a 14 year-old boy. The boy says that he was beaten by his father the previous night. The counsellor reports this to the principal and the principal refuses to take appropriate action. The counsellor does not personally report the matter to Family and Children Services. (See *Child and Family Services Amendment Act, Appendix A.*)

#### Legally Speaking

In terms of physical or emotional danger for a child under 16, the legislation is clear. Counsellors must inform their local Family and Children's Services, or its equivalent, immediately. Many Boards have also established their own "in-House" procedures regarding such referrals. The Board policy may have as the first step reporting to the principal. However, counsellors should be aware that legally there is a personal obligation to report the matter and counsellors should not simply rely on the principal to report. For further discussion on matters related to this area of concern, please see the summary of the Child and Family Services Amendment Act, Appendix A.

What should counsellors do when confronted with students confessing suicidal or homicidal urges? Counsellors may face personal liability and/or negligence suits if they do nothing to attempt to prevent the suicide or homicide after becoming aware of the intent. Obviously, reasonable counsellors would take preventive action although the nature of such action would vary depending on the circumstances. For the counsellors' own protection, however, records of the counsellors' actions should be kept. (See *Confidentiality, page 22*)

**5. Counsellors take into account and show prudential regard for the social codes and moral expectations of the communities within which they work and the ethno-cultural communities represented within that community.**

#### Acceptable Cases

- a) At the beginning of his first year at a school, a counsellor makes a point of becoming well acquainted with the community in which the school is located. He contacts people in the key community agencies, tours the area served by the school and asks school personnel about various facets of the school community.
- b) A counsellor offers a small-group program in enhancing career awareness for girls. Since the school is part of a multicultural community, she invites parents to the school so that she might explain the program. She requests that the girls be assigned to her section of the alphabet so that she may continue to assist with their Annual Education Plans.
- c) During a Program Advisory Team Meeting, when the group is looking at Choices Into Action school-wide planning, the Guidance counsellor provides a list of the dates of major faith holidays of residents in their school community. The counsellor requests that as they develop their school-wide plans, the school value the school community faith diversity and asks that conferences, meetings, workshops, other professional events, co-curricular activities, and exams/tests not be scheduled on these dates.

### Unacceptable Case

A student approaches her counsellor for assistance with a disagreement she is having with her family. The counsellor introduces some possible courses of action for the student which, he knows, conflict with the social standards with which the student has grown up. The counsellor, who interprets his role in this situation as an “information-giver,” fails to assist with the emotional turmoil which results as the student debates alternatives with her parents.

### Legally Speaking

The chances of being sued for professional behaviour which is inconsistent with the community standards is unlikely. However, if the behaviour is so extreme such that the community is unlikely to place trust in the counsellor, then the District School Board could attempt to sever the employment relationship for just cause.

**6. Records of the counselling relationship including notes, assessment data, correspondence and other documents must comply with the regulations outlined in the current Ontario Student Record Guideline and the Freedom of Information and Protection of Privacy Act, as well as any procedures or policies developed by a specific District School Board to interpret and detail the compliance protocol of these Acts. Even when proper consent has been given, the counsellor shall use professional discretion in complying with the request for the release of such information.**

### Acceptable Cases

- a) A counsellor at a District School Board Career Assessment Centre provides an 18 year-old student with a report interpreting the assessment battery that the student has taken. He has the student sign a Statement of Informed Consent before sending a copy of the report to the student's Guidance and Special Education counsellor.
- b) A student asks to see her Ontario Student Record (O.S.R.). The counsellor arranges time so that they can examine it together. This enables the counsellor to interpret test data and explain other records.
- c) A counsellor's sister asks the counsellor to see her brother's O.S.R. which contains a report from the District School Board's Special Education Services. The counsellor explains that the O.S.R. may be seen only by the counsellor or his parents/guardians since he is under 18, unless the school receives a signed Statement of Informed Consent from the counsellor's parents allowing her this access.

### Unacceptable Cases

- a) A student, who has been receiving frequent personal counselling, asks to see her O.S.R. Before allowing the student access, the counsellor removes his notes about the interviews. After the student leaves, the counsellor takes the notes out of his desk drawer and puts them back in the O.S.R.
- b) In order to comfort a student whose standardized test scores

are low, the counsellor identifies by name several other students with similar or lower scores.

- c) A counsellor keeps detailed notes in the O.S.R. about a student's personal difficulties including information about sexual improprieties, drug abuse and petty theft.

### Legally Speaking

Records of counselling relationships normally compose part of a student's Ontario School Records and, therefore, their proper use is subject to The Education Act (Section 266) and the Ontario Student Record Guidelines. Alleged misuse of records by counsellors, consequently, could be a basis for disciplinary action by District School Boards, as well as the basis for civil actions probably claiming defamation.

Related to this ethical principle, it is important to emphasize that, legally speaking, students' interests are best looked after when interview notes and other records are part of their Ontario School Records rather than stored elsewhere. The reason for this is the legal protection afforded the Ontario School Record. Counsellor's notes must be factual in nature and written with the express knowledge that they may be “interpreted” by someone other than the counsellor him/herself.

Counsellors must have counsellor's knowledge and consent prior to using their records for research and teaching purposes. When records are used for counselling, research and teaching purposes, the counsellor must not be identified.

“No action shall be brought against any person in respect of the content of a record.”

The Education Act, Section 266 (8) Subsection 8

However, the Ontario School Record is not inviolable. In criminal cases involving Federal statutes (generally the Criminal Code), the Ontario School Record may be introduced as evidence with or without written authorization. This would not be allowed in such areas as civil actions, Family Courts or coroners' inquests.

Peer helpers are not allowed access to Ontario School Records. (See *Leadership and Peer Support Programs* page 26)

**7. Counsellors are obligated to respect the confidentiality of information gained in the counselling relationship. Counsellors should be informed at or before the time counselling begins, of conditions (e.g. imposed by school, District School Board, or Ministry policy) under which the counsellor cannot maintain confidentiality. In a group counselling setting, the counsellor is expected to set a norm of confidentiality regarding all group participants' disclosure. (See *Confidentiality*, page 22)**

### Acceptable Cases

- a) A teacher asks the counsellor about a student whom the latter has been counselling recently. Since the nature of the student's problem does not involve the teacher, the counsellor explains the importance of maintaining confidentiality. She assures the teacher that, with the

student's consent, she would certainly communicate any concern related to the teacher or his course.

- b) A student, experiencing problems with a teacher, comes to a counsellor for help. The student asks that his comments about the teacher be kept confidential. The counsellor, with the student's permission, approaches the teacher to arrange for the three to meet. Two sessions take place, but details of the initial session remain confidential.
- c) A Guidance secretary, competent in all other respects, tends to "gossip" with other secretaries and staff members concerning students who are being counselled. Upon learning of this, the person responsible for leadership of the Guidance Department speaks privately to her secretary with regard to the importance, ethically and legally, of maintaining confidentiality.

#### Unacceptable Cases

- a) A student approaches her counsellor for help with a disagreement she is having with her parents. Her mother phones the next day and demands to know what her child divulged. Although she had assured the girl that she would keep her comments confidential, the counsellor thinks that the mother might benefit from knowing. She, therefore, explains fully what was said, without the permission of the student.
- b) In the staff room, a counsellor regales the staff members present with anecdotes related by a student during counselling.
- c) In a group counselling session, the counsellor tells the group about the experience of a student in one of her previous group counselling programs. In so doing, the identity of the student is revealed.

#### Legally Speaking

First, it must be asserted that, for students covered by the Youth Criminal Justice Act, it is an offence to publish by any means a report of an offence committed or alleged to have been committed by a young person in which the name of the young person is disclosed until a case is over, the youth is given an adult sentence and the parents consent. The victims and/or witnesses to the alleged offense may similarly not have their identities revealed. The potential legal consequences of a counsellors' failure to maintain confidentiality for any student would be civil actions based on charges of libel or slander.

Of course, disciplinary actions by District School Boards may be taken as well.

Information conveyed by counselees during counselling may only attract a qualified privilege in any court of law. If counsellors are asked to testify about information which they feel strongly should be kept confidential, they can appeal to the judge to do so. If the judge considers the information crucial, counsellors might ask for the courtroom to be cleared while the testimony is given. The judge will weigh the importance of maintaining the integrity of the counselling relationship versus the requirement to properly protect society.

- 8. Counsellors, where they feel that it would be in the best interest of the counselee to do so, will relate confidential information to parents, guardians, teachers, or school administrators only with the knowledge and consent of the counselee, e.g., at school Case Conferences or School Support Team meetings. (See Confidentiality, page 22)**

#### Acceptable Cases

- a) A 15 year-old counselee confides to her counsellor that she is pregnant. The counsellor immediately works with the student to obtain medical advice. He provides the necessary support for the girl to inform her parents of the pregnancy.
- b) A 12 year-old student plans to run away from home and confesses this to his counsellor. She helps the student carefully examine his reasons for wanting to leave home. In so doing, she becomes convinced that the relationship between the boy and his parents is healthy and that the problem can be resolved by having them discuss the situation. She advises the student that she is confident his parents will understand. After gaining the boy's consent, the counsellor contacts the parents and arranges a meeting.
- c) A parent phones to request that the counsellor see her son since something seems to be bothering him. She asks that her request be kept confidential and that the counsellor phone her following the session to report results. The counsellor agrees to see the student but fully explains that he would tell the student why he is being seen and that no report could be made without the student's knowledge. The counsellor offers to see the parent and son together following the initial appointment, if it seems warranted and with the son's consent.

#### Unacceptable Cases

- a) A student has approached his counsellor concerning a disagreement with a teacher. Although the student has asked that his concerns be kept confidential, the counsellor tells the teacher, who is a personal friend.
- b) A student is being bullied by other students and consults his counsellor for assistance. She assures the student that she will help eliminate the problem although she does not indicate how she plans to do so. Without informing her Vice-Principal, the counsellor calls the offending students to his office. Harassment increases off school grounds. The student does not return to the counsellor.

#### Legally Speaking

Legal actions based on counsellors' nonconformity with this ethical principle are unlikely. Any such actions would probably be based on charges of libel or slander. Counsellors who are employed by District School Boards are subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act.

- 9. Counsellors, when reporting research results and supporting data, will not reveal the identity of the persons used as subjects without their express written permission.**

### Acceptable Cases

- a) A graduate student working on his PhD thesis approaches a counsellor to obtain information on teenage pregnancies. He has gained the approval of the District School Board and the school Principal to contact school personnel. The counsellor gives the information requested, but does so in a manner which safeguards the anonymity of the girls involved.
- b) An elementary school counsellor has been working with a group of exceptionally intelligent students. The School Council asks for an individualized report of the program's effectiveness. The counsellor explains that the nature of the report must protect the identity of the individuals involved, but agrees to report on the program with that provision.
- c) Knowing that his group counselling program with underachievers will be evaluated at the end of the school year, the counsellor prepares a printed explanation of the information to be released. He consults with parents and students to ensure that he has written permission to use information concerning individuals in the group.

### Unacceptable Cases

- a) A secondary school counsellor is asked to report to the staff concerning the progress of graduates. In the cases of those who proceeded to post-secondary education, the information is based on reports from the Colleges of Applied Arts and Technology and Universities. In an effort to make the report more interesting, the students are identified by name. Subsequent to the presentation, the students' first-year results are posted in the staff room.
- b) For a workshop concerning psychological testing, the counsellor, who is presenting, takes copies of some students' actual test data. Since the workshop is in an area of the city quite distant from her school, she doesn't bother to take the precaution of removing the students' names from the copies.

### Legally Speaking

Aside from the provisions of the Education Act, restricting access to personal information, the provisions of the Municipal Freedom of Information and Protection Act would clearly only permit disclosure where the student's identity cannot be traced.

**10. Counsellors, when they receive requests for information about counselees, shall follow the Access to the OSR provisions as outlined in the current Ontario Student Record Guideline. Even when proper consent has been given, the counsellor shall use professional discretion in complying with the request.**

### Acceptable Cases

- a) An employer phones a counsellor to request data from the Ontario Student Record of a past student who is being considered for a full time job. The employer reports that he has a signed "release form" which will be forwarded, but a decision must be made on the same day. The counsellor arranges for the release form to be faxed or couriered to

him that day. The counsellor phones the ex-student who confirms that information may be given.

- b) A counsellor receives a phone call from an individual who claims to be a parent of a student at the school. He asks for information regarding the student's attendance and marks. The counsellor explains that the information cannot be divulged over the phone and asks for a written request.

### Unacceptable Cases

- a) A probation officer is preparing a pre-sentence report concerning a student. She contacts the school to inquire about the student's performance and deportment. The counsellor conveys the requested information including information gained during counselling sessions. The pre-sentence report is very critical of the student and leads to a relatively severe sentence. The Guidance Department is cited as a source of information although neither the parents nor the student approved any release of information.
- b) A release of information form is received from a student's prospective employer. A W.I.S.C. profile sheet, contained in the O.S.R., is photocopied with other requested material and sent to the employer with no interpretive information. The student is unaware that such information is in the O.S.R. and the employer is not qualified to intelligently interpret the W.I.S.C. data.

### Legally Speaking

Section 266 of The Education Act, states that students' records are privileged and are available only to supervisory officers, the principals and teachers of the school for the improvement and instruction of the student. The records are not available to other parties without written permission of the parent or guardian of the pupil, or, where the pupil is an adult, the written permission of the pupil. Consequently, lack of conformity to these instructions would be grounds for action by District School Boards against counsellors. In addition, civil actions might be launched on the basis of liability or negligence in cases involving unauthorized dispensing of information.

The police must have a search warrant or "release form" in order to obtain information from students' records.

The Royal Canadian Mounted Police should have a Writ of Assistance, search warrant, or an authorized release form to obtain information.

Counsellors working for or on behalf of institutions covered by Freedom of Information and Protection of Privacy legislation must follow the personal privacy provisions of that legislation. All items in this information section must be interpreted within that legislation.

**11. Audio or videotapes of interviews require consent. A written explanation of the purpose of the audio or videotape and the way it will be used should be presented to the counsellee. Students under the age of eighteen require the consent of their parents. Tapes must be returned to the student/parent or the information erased after the purpose of the tape has been accomplished.**



### Acceptable Case

A counsellor asks a student's permission to tape their counselling session. She informs the student for what purpose the tape will be used and that the tape will be treated confidentially. The student gives his consent. The counsellor shares the tape with other counsellors in a training session, ensuring that the identity of the student is kept confidential. She erases the tape following this group training session.

### Unacceptable Cases

- a) A counsellor videotapes a career counselling classroom session in which a new career education resource is being piloted. The tape is subsequently used as a promotional tool to market the resource. The counsellor does not obtain signed Statements of Informed Consent from each of the students in the class.
- b) A student enters his counsellor's office displaying signs of intense emotion. The counsellor wants to tape the counselling session, but does not want to divert the student's attention with the request and the necessary explanation. He tapes the session for use during his counselling practicum, but does not first obtain student consent.

### Legally Speaking

The definition of a "record" in the Municipal Freedom of Information and Protection of Privacy Act clearly includes an audio or videotape. Thus, all of the rules concerning access and disclosure apply. It is important for counsellors to be aware that others outside the school community could obtain access to the audio/videotapes.

## 12. Counsellors, upon reaching their own limitation in a counselling relationship, should:

- **seek consultation from other professional persons, or**
- **refer the counsellee to an appropriate school board staff, community agency, or private practitioner for assistance and counselling, or**
- **terminate the counselling relationship, with appropriate explanation to the counsellee.**

### Acceptable Cases

- a) Upon reaching what he considers to be his professional limitation in working with a student who simply is not achieving satisfactorily, the counsellor contacts the boy's parents. He recommends the boy be referred to an appropriate District School Board resource for assessment and remediation.
- b) A counsellor begins to counsel a student regarding the improvement of study habits. It soon becomes apparent that extremely serious family problems exist. The counsellor informs the student about Family and Children's Services and agrees, having consent of the student, to see the parents in order to expedite a referral.
- c) A counsellor recognizes a severe personality conflict between herself and a client. She arranges for another

counsellor to take responsibility for the client, explaining the reasons to the client.

- d) After a considerable number of counselling sessions during which little progress is made, the counsellor recommends that he refer the student to the District School Board psychologist or to one of his colleagues in the school. The student refuses to cooperate with either proposal. The counsellor explains that, in his judgment, therefore, their counselling relationship must be terminated.

### Unacceptable Cases

- a) After a number of interviews, a secondary school counsellor has failed to help a student progress toward his stated goals. However, she does not consult with her colleagues regarding the problem. She does not recommend that the student work with a different counsellor.
- b) A counsellor works with a student for months concerning the student's bouts of depression. No noticeable improvement is evident. He recommends that the student see a psychologist and offers to arrange a referral. The counsellee insists on continuing the counselling. The counsellor agrees to do so against his better judgment.
- c) A student is referred by a counsellor to a psychiatrist. The counsellor agrees to the student's request that they continue counselling sessions on a regular basis although the psychiatrist is attempting to help with the same problem. He does this without consulting the psychiatrist.

### Legally Speaking

A realistic sense of what constitutes limitations is important for legal as well as ethical reasons. A large number of what Americans refer to as malpractice suits have been based on clients and/or parents in the United States accusing counsellors of venturing beyond their expertise and their mandate.

In Ontario, counsellors accused of operating beyond reasonable limits could be sued for negligence. As in any suit of this type, of course, the counsellor is not the sole party being sued. The District School Board is usually included. While the Board will have legal representation, it is wise for counsellors to employ lawyers to look after the counsellors' personal interests.

To avoid vulnerability relating to this ethical principle, the following suggestions are offered:

1. Counsellors should be honest with themselves regarding their professional limitations, taking into account their training, their legislative mandate identified in the Education Act, and by Ministry Policy Documents.
2. Counsellors should not hesitate to consult with other professionals and to refer counsellees when they deem it appropriate.
3. Especially in referring or terminating counselling relationships, counsellors should ensure that documentation of their actions exists. Such documentation might consist of letters of referral, or agreements signed by students and/or their parents. The point is that it is advisable to maintain records of actions which might be questioned or misinterpreted subsequent to the event.





## Ethical Principles, Illustrative Cases, and Legal Comments

### Section C: Measurement and Evaluation

**With the increased importance of standardized testing in areas such as student diploma requirements, career exploration, post-secondary planning, and supporting special-needs students, it has become essential that the trained school counsellor be knowledgeable in the fundamentals of educational statistics (e.g., means, medians, percentiles) and of testing theory (validity, reliability, error of measurement).**

**Measurement and evaluation information referred to in this section is deemed to be** that information which is stored in the Ontario Student Record. As such, all current O.S.R. regulations apply, (see *Maintenance of Records, page 31*) as well as regulations from the Municipal Freedom of Information and Protection of Privacy Act.

**1. Counsellors have a responsibility when sharing assessment information about counselees with other professionals to follow procedures outlined in the current Ontario Student Record Guideline (2001).**

#### Acceptable Cases

- One of the counsellor's clients has been referred to a psychologist. Once the appropriate release form has been signed, she ensures that the results of the diagnostic tests are forwarded to assist in the girl's assessment.
- Having obtained the necessary release forms, the counsellor forwards a career assessment report and an educational plan of an adult student to the community agency responsible for general welfare assistance.
- A student has been hired by a company. The latter requests evaluative information, especially standardized test scores. The appropriate release of information has been granted. The counsellor contacts the company to inquire about the purpose and use of such data to ensure that it will be treated in a professional and correct manner.

#### Unacceptable Cases

- A counsellor posts the individual results of a recently administered battery of tests for a special needs student in the Staff Room.
- Upon the receipt of a request for O.S.R. information and a "release form," the counsellor forwards to a prospective employer the relevant data including a personality assessment profile. This assessment had been used in the treatment of a problem the student had experienced four years previously.

#### Legally Speaking

As mentioned previously in relation to other ethical standards pertaining to confidentiality, potential legal actions resulting from non compliance with this ethical principle could be a basis for charges of libel or slander. The allegedly careless sharing of evaluative information must lead to the counselee being harmed to a serious degree in order for legal action to be taken. In addition, the counsellor could be prosecuted pursuant to the Municipal Freedom of Information and Protection of Privacy Act.

- In general, assessment instrument results represent only one factor in a variety of pertinent data for counselling purposes. It is the responsibility of the counsellor to supply adequate orientation which may be placed in proper perspective with other relevant factors. The counsellor must recognize that language, socio-economic, ethnic and cultural factors may affect the validity of assessment results.**

#### Acceptable Cases

- A father contacts his daughter's counsellor concerning the parents' intention of withdrawing her from school. The basis for this course of action is what the father describes as "gross underachievement." An important factor in his thinking is the result of a single test administered three years previously. The counsellor arranges to see the girl and her parents. One of the aims of the session is to enable the counsellor to interpret the test result for them and to put the result in perspective. Subsequently, they can discuss available alternatives more effectively.
- A relatively diligent and mature Grade 11 student, who achieves high marks in U courses requests aptitude testing to assist in planning. The student is very disappointed with the results and, after discussion with his parents, informs the counsellor that he must cease considering university as a possibility due to his test scores. The counsellor re-emphasizes that this is only one of many important factors and recommends a complete career and educational assessment.

#### Unacceptable Case

A counsellor routinely administers the Strong Interest Inventory to all grade eleven students without regard to their socio-economic, ethnic or cultural background or their potential career plans.

#### Legally Speaking

Negligence suits might result from gross inconsistency with this ethical standard. It may be shown that a student's career

possibilities and lifetime income have been significantly limited by the undue stress placed solely on test results in placing the student. Obviously there are numerous checks built into the systems of most District School Boards so that inappropriate placement is rectified. Such suits, moreover, are unlikely to succeed in Ontario. There have been some successful suits of the type being discussed in the United States. In Ontario, counsellors would more likely face action from employers rather than court actions in the face of violations.

**3. Counsellors, when using standardized tests for the assessment of counellees, will consider only appropriate tests of recognized validity and reliability. They will use only tests which they are competent to administer.**

#### Acceptable Cases

- a) The Head of Guidance ensures that all counsellors have received appropriate training in the use and interpretation of all tests being used in the department.
- b) A counsellor is placed in charge of conducting a thorough annual review of any testing being done in the Guidance Department. His resources and knowledge of development in testing and measurement remain up-to-date through the reading of appropriate journals and other publications as well as participation in workshops and conferences.
- c) A parent requests that her child be tested to determine whether he has a learning disability. The counsellor refers the child for assessment to the individual responsible for the leadership in the Special Education Department.
- d) A Guidance Head decides to increase the amount of testing done by his department, but he feels uninformed in the area of testing. He therefore takes a summer course on testing at a university. During the course, he compares available tests related to his aims.

#### Unacceptable Cases

- a) A counsellor uses a diagnostic test available in his school although he has had no training in its use.
- b) Since copies of a particular aptitude test are plentiful in her department, a person responsible for leadership in the Guidance Office decides to administer it to individuals wanting information concerning their abilities. This individual does no research concerning the validity or reliability of the test.
- c) At a workshop, a counsellor learns that one high school incorporates a personality type indicator in one of its career education credit courses. Although he has had no training or experience with such resources, he decides to include it in the same course at his school.
- d) A counsellor is asked by a teacher to determine if a student has a particular learning disability. The counsellor administers a general intelligence test on the assumption that, through it, any problem in learning will become evident.

#### Legally Speaking

Where a counsellor uses a test which he/she is not competent to administer, he/she will obviously be exposed to employment repercussions with respect to incompetence, in possible civil actions by parents, and charges from the College of Teachers.

**4. Counsellors are obligated to administer standardized tests in strict accordance with the published directions and will ensure that examinees have adequate orientation to test procedures.**

#### Acceptable Cases

- a) Prior to initiating the school's testing program, the counsellor ensures that each group being tested is well informed about all facets of the program. She trains a small group of teachers to assist with administration.
- b) The counsellor proposes a group testing program. The principal refuses to alter period length to suit the testing; therefore, students would have 10 minutes less than they should have for the test. The counsellor is advised to allow for the diminished time in the scoring and administration of the tests. He explains that this would not be ethical.

#### Unacceptable Cases

- a) A counsellor gives an interest inventory to a student. Later, she sees the student completing the inventory with friends offering advice. The atmosphere, she perceives, is far from serious. In the subsequent interpretation session, the counsellor does not mention this potential problem.
- b) A counsellor happens to know what test is used by a company hiring apprentices. In discussion with his counsellor, the student, who wants to obtain an apprenticeship position with this company, learns that the counsellor has access to this test. He asks the counsellor to give him the test and to examine the results as this would enable him to do better on the test when given by the company. The counsellor agrees to do so.

#### Legally Speaking

In the example above, where the counsellor gives the student access to the test, he or she would clearly be subject to potential civil action by the company, especially if the student were negligent in the job or committed some other wrongful activity. As noted previously, the counsellor may also be subject to a complaint at the College of Teachers or sanctions from his or her employer.

**5. Counsellors have an obligation to interpret test results to counellees in light of all other evaluation data. Tests and other assessment instruments must be followed by competent interpretation (e.g., in reference to transition to post-secondary education, training and workplace).**

#### Acceptable Cases

- a) The W.I.S.C. has been administered to a student following which the parents and student are anxious to learn results.

The psychologist sends the profile sheet to the counsellor for inclusion in the O.S.R. The counsellor refuses to hold an interpretation session without the psychologist present as she has not been trained to interpret W.I.S.C. results.

- b) It is the school's policy to administer a basic skills test annually, to record the results, but to make no effort to convey scores or interpretive information to students and parents. The counsellor approaches the principal with a program whereby results and interpretive suggestions can be disseminated by qualified counsellors.
- c) A counsellor is confronted with an aptitude test profile with which he is unfamiliar. He contacts other counsellors who have expertise in the test. Through consultation, he learns to interpret the test results.
- d) A counsellor is administering a computerized interest inventory. He remains with the student to assist with administration and interpretation.

### Unacceptable Cases

- a) Upon examining the O.S.R. with a student, the counsellor finds scores from an achievement test battery with which she is not familiar. The student asks for interpretation of the results. Rather than appear incompetent, the counsellor develops a "common-sense" interpretation based on her general knowledge of achievement tests.
- b) Aptitude tests are administered to Grade 9 students prior to course selection sheets for Grade 10 being completed. The counsellor strongly advises the students to choose courses in Grade 10 primarily on the basis of their percentile rankings on the aptitude tests. The high reliability and validity of the test scores are emphasized.
- c) A counsellor trains a peer helper to administer an interest inventory. When the printouts come back from the scoring service, the counsellor, who is very busy, asks the peer helper to run the interpretive session. (*See Leadership and Peer Support Programs, page 26.*)

### Legally Speaking

Where counsellors have not interpreted test results in light of all other evaluation data, the counsellor may be subject to allegations of incompetence. Again, as noted above, allegations of incompetence may have an employment impact and there is a potential risk of action by the Ontario College of Teachers.

### **6. Counsellors, when making statements to the public, counselees or associates about tests and testing, will take care to give accurate information and proper interpretation in order to avoid false claims and misconceptions.**

#### Acceptable Case

A student is told by her parents to see her counsellor so that she might undergo some testing to determine the best career for her. The student obviously perceives that the outcome of testing would be the identification of the one career most suitable for her. The counsellor discusses with the student and her parents the realistic aims and limitations of testing in a student's career planning.

### Unacceptable Cases

- a) The results of an interest inventory are returned in the form of a lengthy printout. The counsellor returns the computer printouts to students without any interpretation.
- b) A reporter from the local newspaper is doing a story on minorities and standardized testing in the schools. The counsellor tells the reporter that all assessment instruments are valid with all groups of students.

### Legally Speaking

The legal implications of this ethical principle are almost non-existent. Perhaps closest to the realm of possibility are suits launched by test publishers in response to defamatory remarks about specific tests. If the critical remarks made by counsellors were to be widely read and of questionable accuracy, the potential for suits would exist. Admittedly, this is a highly unlikely scenario.

### **7. Counsellors must ensure that the information contained in a computer assisted career counselling and guidance system is accurate and up-to-date. (See *Cyber-Ethics, pp. 25-26.*)**

#### Acceptable Cases

- a) The Head of Guidance ensures that funds are allocated each year to pay for the annual updates of the department's computerized career search program.
- b) Counsellors encourage students to verify post-secondary admission information on individual College/University websites. Internet resources tend to be more accurate than print material because they are updated frequently.

### Unacceptable Cases

- a) A prominent career information system has not been updated for five years. The counsellor continues to use the program, and assures students that it is up-to-date and accurate.
- b) In order to save money, a counsellor continues to use an American database after a Canadian database has been developed.

### Legally Speaking

Using outdated or incorrect data could theoretically provide a basis for an action in negligence. However, it is unlikely that the choice of career would be based solely on computer information. Thus, the chances of success are small. The employer could certainly justify some discipline, and warning to improve one's competency.

### **8. Counsellors have a responsibility (Choices Into Action) to facilitate the ongoing review and evaluation of the school's guidance and career education program plan and to conduct an effectiveness survey every three years.**

#### Acceptable Cases

- a) In the absence of a template from her District School

Board, a Guidance Head approaches her Principal and requests permission to use the template provided from the Ministry of Education in order to conduct the Program Effectiveness Survey for her school's guidance and career education program.

- b) A Program Effectiveness Survey, conducted in a Secondary School, is reviewed by the school's guidance and career education program advisory team. The results are reported to students, parents, staff and the school council. The results will directly influence the planning and future delivery of the guidance and career education program.

### Unacceptable Case

A Guidance Head chooses to delay conducting the Program-Effectiveness Survey for his department for fear that the results will be reported to the Ministry of Education.

### Legally Speaking

A counsellor's responsibility to facilitate the ongoing review and evaluation of the school's guidance and career education program plan is unlikely to result in legal action against the counsellor, but there are potential employment issues if the counsellor is considered to be incompetent in this respect.



## Confidentiality

1. Counsellors shall inform students as early in the relationship as possible of any limits to the confidential nature of the information shared.
2. The reporting of child abuse and neglect will be done in compliance with each Board's established protocol and within the expectations of the Child and Family Services Amendment Act.
3. Students who are at risk for imminent self-harm may need to have a mental health assessment and information may need to be shared without their consent.
4. A counsellor who possesses information about a student who poses a physical threat to another person may also need to act without the consent of the student.
5. The Youth Criminal Justice Act provides that no person shall publish any report of an offence or an alleged offence committed by a young person, which names or, in any way, identifies the young person charged, the victims or the witnesses to the alleged offence. The prohibition covers reports of both the actual offence and any hearing, adjudication, disposition, or appeal under the Act. The word "publish" should be interpreted broadly. While persons charged with this offence have, in the past, been in the field of journalism, it would be an offence for counsellors to divulge information relating to a charge to such persons as prospective employers. Under the Youth Criminal Justice Act, consent of the young person involved is irrelevant. One must simply not communicate information which names or in any way identifies the young person charged, the victims, or witnesses until a case is over, the youth is given an adult sentence and the parents' consent.
6. Counsellors appear to have the authority to authorize the transmission of confidential demographic data to the College and University application centres, long

before students actually make the decision to submit an application, with the express understanding that once applications are submitted, the relevant data of all non-applicants will be deleted from the system(s).

In the introduction to the Application Guide, the Ontario University Application Centre makes a clear statement regarding the use of data:

"The student by making formal application is allowing the Application Centre and the Universities to access the demographic and academic information during the application year."

Counsellors are urged to follow their individual Board's protocols regarding this issue.

### Legally Speaking

As noted, for students covered by the Youth Criminal Justice Act, it is an offence to publish by any means a report of an offence committed or alleged to have been committed by a young person in which the name of the young person, victims or witnesses are disclosed. For students not covered by the Youth Criminal Justice Act, the potential legal consequences of a counsellor's failure to maintain confidentiality would be civil actions based on charges of libel or slander. Of course, disciplinary actions by District School Boards may be taken as well.

Information conveyed by counselees during counselling may only attract a qualified privilege in any court of law. If counsellors are asked to testify about information which they feel strongly should be kept confidential, they can appeal to the judge to do so. If the judge considers the information crucial, counsellors might ask for the courtroom to be cleared while testimony is given. The judge will weigh the importance of maintaining the integrity of the counselling relationship versus the requirement to properly protect society.





## Cyber Bullying



### Preamble

Connecting with longtime friends and making new acquaintances has always been among the most important goals of adolescent social activity. With the exponential growth in technologies such as email, instant messaging, chat rooms, text messaging, blogs and the creation of Web sites such as Facebook and MySpace, among others, a whole new world of social communications has opened up for today's young people that enables them to establish even wider social networks.

While the majority of the social interactions today's youth have are positive, recently there has been significant increase in the number of young people exploiting the power of these communication technologies and networks to intimidate and antagonize others. Featuring many of the qualities and characteristics of its face to face counterpart, this online world practice has become known as cyberbullying.

### What is Cyberbullying?

Cyberbullying is the general term describing any communication activity using cyber technology (eg. computers, cell phones, and smart phones) that could be considered harmful to individual or collective wellbeing. It can include predation, hate group recruitment, invasion of personal privacy, harassment, stalking, and harmful speech, inadvertent access of harmful material and dissemination of violent and abusive material.

### Types of Cyberbullying

There are several types of cyberbullying:

- Sending instant messages containing insults or threats directly to a person
- Spreading hateful comments about a person through email, instant messaging, or postings on Web sites and online diaries (Blogs, weblogs)
- Stealing passwords and sending out threatening emails or instant messages using an assumed identity
- Building Web sites to target specific students or teachers
- Sending hurtful text messages through cell phones
- Using camera phones to take and distribute unwanted photos of classmates
- Flaming – Sending someone a message to deliberately hurt their feelings or make them angry
- Voting or polling booths. Cyberbullies can use Web sites such as [www.freevote.com](http://www.freevote.com) to create Web pages that allow students to vote online for The Ugliest, Fattest, Dumbest, etc. boy/girl at a specific school.

### Scenarios

#### Acceptable Cases

- a) A student comes to your office and tells you that there is a Web site that has been designed to ridicule another student



in the school. She gives you the URL and you go to the site to confirm its existence. You take this information to administration and you meet with the ridiculed student. Your next steps are to meet with teachers and student leaders and devise a school plan to address the issues of cyber bullying in your school.

- b) A student discovers that a peer in her math class has created an online forum in which students are invited to vote on whether or not the student is a “tramp”. The student comes to your office before her math class saying she must drop this course. She feels guilty because she was kissing a boy at a weekend party. Since it happened on the weekend, she is convinced that the school can do nothing about this incident. You explain to the student that this incident does in fact affect her safety at school. You explain to her that this situation must be brought forward to an Administrator and offer to go with her to discuss what happened with her Vice Principal.

### Unacceptable Cases

- a) A student comes to your office and through conversation reveals that she has a blog site where she writes her journal. She shows you the site, and you read inappropriate comments, including threats, directed toward certain teachers and students in your school. You advise her that this is not acceptable and ask her to delete the site. You ask her to return to your office the next day to make sure that she has done this.
- b) A student comes to her counsellor upset that she has discovered that photos of her, which were taken by her (now ex) boyfriend has been uploaded to his MySpace page. Then they are copied and reproduced in many more places, including photosharing sites. Her boyfriend told her that he is not responsible for what was done with the photos after he uploaded them. Her counsellor suggests that she ignores what has happened because acting on this situation may increase the probability of drawing more attention to the photos and she is confident this will subside.

### Legally Speaking

It is a crime under the Criminal Code of Canada to communicate repeatedly with someone if that communication causes the individual to fear for their own safety or the safety of others.

It is also a crime to publish a defamatory libel; that is, writing something that

is designed to insult a person or likely to injure a person’s reputation by exposing him or her to hatred, contempt, or ridicule.

The act of cyberbullying may violate the Canadian Human Rights Act, if the cyberbully spreads hate or discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status or disability.

While Section 2 of the Canadian Charter of Rights and Freedoms guarantees freedom of expression, this right is guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society and, in the case of cyber bullying, this right must be weighed against Section 7 of the Charter which guarantees the right to life, liberty and security of the person. In general, Section 2 of the Charter has not been accepted as a defence in civil or criminal bullying cases.

All employers are required to guarantee a safe work environment to their workers. This applies to teachers—school boards and administrators must act against any bullying behaviour toward their teachers—and it also applies to students. Therefore, school boards, administrators and teachers have a responsibility to guarantee a safe learning environment for their students. Even if bullying is taking place outside the school (such as on a Web site), the school has a responsibility to act if the situation is preventing any student from enjoying a safe learning environment. Counsellors must be aware of their local school board/district policy (if one exists) regarding their responsibilities and obligations around cases involving cyberbullying.

**Duty of care:** Schools have an additional responsibility to act *in loco parentis*, or in the place of parents, because they have charge of children. Therefore, their duty to prevent and act on cyber bullying extends beyond that of employers.

Teachers and administrators must be aware of **tangible** and **foreseeable harm** that might come to students under their care. For teachers or administrators to be held liable, the harm done must be related to an **action** or **omission** on their part.





### Preamble

The field of cybercounselling is a new and evolving field. It is the next step beyond telephone (crisis-line) counselling that has been in existence for over three decades. There are a number of vehicles for cybercounselling: email, webcam, livechats (e.g. MSN Messenger) and videoconferencing. For the present ethical and legal guidelines, we shall confine ourselves to the most popular vehicle, email. The other vehicles for cybercounselling will be addressed in future addenda.

Current applications include:

- a school counsellor responding to career and educational enquiries from students and parents on a school-based Website
- a school counsellor who utilizes email to continue counselling-interaction with a student who is a counsellee at school
- a school counsellor is asked to register a student for an eCourse.

### eLearning

Online courses have become commonplace in secondary, post-secondary education and professional development. In the past, schools (and school counsellors) could be very custodial about course access. With internet access and aggressive web marketing, students and parents can now access these eCourses directly. The school counsellor still has an ethical responsibility to make certain that access to an online course is in the best interest of the student. While these courses create an alternative to school-based courses, it is not the academic answer for all students. Counsellors must collaborate with students and their parents about the appropriateness of these courses (and how they fit into the student's overall academic pathway and social development).

### Acceptable Case

When asked to sign for an eCourse by a parent, the counsellor meets with the student and parent to determine if this learning vehicle is an appropriate fit for this student, and to determine that it will not have a negative impact on the student's present daytime course load, and will not create additional stress on the student's "life-space."

### Unacceptable Case

A parent emails the counsellor, asking him to fax a permission form for an online course. The parent says he wants his child to take this eCourse "because he spends too much time videogaming, and can take this course to fill his spare time." The counsellor signs the form, and faxes it to the virtual school.

### Identity

The counsellor must provide the client with proof of his/her professional identity from alternative sources, including second-party professional verification (preferably through OSCA, or other comparable professional association).

By the same token, the client is to confirm by alternative means (e.g. telephone number) in the event that the counsellor must contact the client because of email service disruption. In addition, the counsellor may have to summon emergency support personnel in the event of life-threatening comments from the client. Therefore, (in the case of interactions dealing with personal/emotional issues), the cybercounsellor is to obtain the client's actual name, real address and phone number at the beginning of the counselling email-based interactions.

### Acceptable Case

A cybercounsellor is approached online by a student who admits to deep depression, but refuses to identify him/herself. The counsellor indicates that further email discussion is not possible with an anonymous student.

### Unacceptable Case

An email client reports a wish to commit suicide. The cybercounsellor begins to self-reveal that he also had these emotions in the past, and encourages the anonymous client to vent these depressive feelings.

### Length of Archiving

The counsellor must indicate to the client the length of time the email interactions are archived.

### Acceptable Case

The cybercounsellor indicates that the email interactions will be kept only for the duration of the series of sessions; the email file will be deleted immediately after the last session.

### Unacceptable Case

The cybercounsellor finds that a certain client has a fascinating issue, and decides to save the interaction log on disk for possible future use in an article.

### File Sharing

The counsellor must indicate to the client if the email interactions are shared with professional colleagues or supervisors (for the purposes of research or professional development).

#### *Acceptable Case*

The cybercounsellor saves client notes and email interactions in a secure, password-protected file on her computer.

#### *Unacceptable Case*

Because the cybercounsellor is not always available, he saves his client notes and email interactions of an identified student in a shared server file so that the other counsellors can access the information in case the client comes into Counselling Services unexpectedly.

#### *Alternative Emergency Access Points*

The counsellor is to provide the client with alternative access points (phone, fax or mail) in the event of email service disruption.

#### *Acceptable Case*

The Counselling Services homepage on the school's Website also lists the school's telephone and fax numbers.

#### *Unacceptable Case*

In an effort to reduce the amount of telephone and fax

traffic to the school, and to aggressively market this new Cybercounsellor Service, only the email address of Counselling Services is provided on the school's website.

#### *Inappropriate Web Applications*

If the counsellor provides follow-up websites for further client research (e.g. career and educational sites), the counsellor must confirm that these are still active and accurate.

#### *Acceptable Case*

A counsellor is assigned to constantly update the Counselling Services homepage with current and appropriate links to career, educational and personal-support websites.

#### *Unacceptable Case*

The Counselling Services homepage lists links to popular commercial gateway sites that direct users to a full range of topical websites. However, these links are not periodically re-assessed to determine their existence and their level of commercialization.



## Ethical Guidelines for Leadership and Peer Support Programs

Peer assisting programs exist within a number of secondary and elementary schools, colleges and universities. These programs have enhanced the effectiveness of existing services by increasing the outreach programs available to students and enhancing Guidance services. Peer assistants offer friendship, encouragement and support to their fellow students and they can assist with school and community events.

There are two types of Leadership/Peer Assisting programs in high school: volunteer or extra curricular and GPP3O – Leadership and Peer Support, a grade 11 open course. (For more information about this credit course, please access the guidance and Career Education curriculum from [www.osca.ca](http://www.osca.ca).) While the two types of programs are similar in their outcomes, it is important to refer to the course expectations for completion of the GPP3O credit. Teachers who are conducting peer assisting programs must accept the responsibility of ensuring that their programs fall within the legal framework as defined by The Education Act, as well as meeting the ethical standards as set forth by the College of Teachers and the Ontario School Counsellors' Association.

### Selection, Training, and Support

#### *Selection*

Establishing specific guidelines/criteria for selecting volunteer peer helping programs is imperative. A personal interview

either in an individual or group format should take place. The following information may be obtained as part of the selection process:

- a detailed written application asking for examples of leadership, volunteering, helping situations, and what confidentiality means to the applicant
- teacher references
- proof of good attendance; exemplary "work ethic"; and good grades.
- the intent of the applicant as to interest in pursuing this program

#### *Training*

Since Peer Assistance Programs are constantly open to scrutiny, it is imperative that the students are adequately prepared for the tasks they undertake. Training and instruction are, therefore, of paramount importance (Choices Into Action - Peer Assistance Programs, p.21). We have an ethical obligation to provide them with the skills necessary to meet their objectives. See Course Profile for specific expectations of GPP3O.

### *Suggested Topics for Training Sessions*

It is fundamental that peer assistants receive as much training and preparation as possible before they are thrust into a helping situation. Essential topics for training include:

- Confidentiality
- Communication skills
- Empathy vs. sympathy
- Assertiveness
- Volunteerism
- Diversity
- Suicide awareness
- Various social/emotional/physical issues
- Study techniques
- Education and career research strategies

### *Ongoing Support*

Regular meetings with students for the purpose of training, supervision, sharing and personal growth are essential responsibilities of the teacher who implements the program. Teachers who neglect to monitor and supervise the actions of their students could be subject to criticism or in the worst-case scenario, dismissal by their District School Board administration.

### *Appropriate Roles and/or Activities*

Peer assistants are effective communicators with their peers. Their strength lies in their proximity to the problems and events that face their fellow students. As long as peer assistants listen and open the lines of communication, they serve an important function.

Some examples of appropriate activities for any assistance program are: guidance clubs, orientation of new students, newsletters, tutoring, mediation, mentoring, community outreach projects, i.e., food drives, helping senior citizens, presentation of workshops, organization of relevant awareness days and displays, i.e., anti-bullying, study skills, celebration of diversity, teenage stress, alcohol and drug abuse, etc.

### *Ontario Student Records/Personal Information*

The question of O.S.R.s and their use is one area that is very specifically addressed by The Education Act. Because of the privileged nature of the information that is contained in the school record folder, its access is restricted to supervisory officers, principals and teachers of the school, never to peer helpers. To ensure there is no disclosure to third parties, peer assistants cannot have any access to other student's school records (either paper or electronic); Annual Education Plans (AEPs), Individual Education Plans (IEPs); or reports, counselling summaries, school/board system computer(s), or programs that have student information.

### *Referrals and Confidentiality*

The critical issue of confidentiality is reinforced in Choices Into Action, p.22-23.

*See also Confidentiality, page 22.*

Although the Peer Assistant Program is not designed for helpers to deal with serious personal problems of other students, at times such problems may be confided to them. Peer assistants are obligated to respect the confidentiality of information gained in the assisting relationship. However, peer assistants must recognize their limitations. The following guidelines are offered to peer assistants in decisions about when to refer a student to a professional school Guidance counsellor.

Referrals "must" occur when:

- the client shows or expresses thoughts or symptoms of depression and/or suicide
- physical or emotional danger to students or other persons is known or suspected
- acts or activities which are illegal become known
- a peer assistant feels unable to deal in a caring and responsible way with a student's concern
- a peer assistant needs some assistance or direction in dealing with a student's concern

### *Keeping Informed*

It is important to keep the community aware of the existence and benefits of leadership and peer support programs. This can easily be achieved through a course selection guide, student handbook, pamphlets, school website, and the media, i.e., photographs and newspaper coverage of all community events.

The Peer Assisting Programs in Ontario schools serve many different functions. Each of them, however, must set its program objectives and constantly evaluate whether it is meeting its goals within the framework of the law, guidelines of the Ministry of Education and ethical standards as set out by the College of Teachers and the Ontario School Counsellors' Association.

### *Legally Speaking*

As noted, Section 266 of the Education Act states that student records are privileged and are available only to supervisory officers, the principals and teachers for the improvement and instruction of the student. The records are not available to other parties without written permission of the parent or guardian of the pupil, or, where the pupil is an adult, the written permission of the student. Consequently, lack of conformity with these instructions would be grounds for action by District School Boards. In addition, civil actions might be launched on the basis of liability or negligence.





## Counsellors and the Law

### I Guidelines Regarding Counsellor–Police Relations

Counsellors in most regions of Ontario have excellent working relationships with the various police forces. This co-operation benefits young people. The following statements are offered to assist counsellors in appreciating the parameters of their interaction with the police.

1. To examine school records, the police must present a search warrant.
2. Although it would be rarely appropriate to do so, a principal may deny the police access to the school unless they have come to make an arrest or present a search warrant as a school is legally considered as private property.
3. In relation to young persons, the police or the school should contact the parents before the child is questioned by the police. If necessary, a principal and/or counsellor can act “in loco parentis” by informing the student of his/her rights and can attempt to be present during questioning.
4. Legally, unless a search warrant is presented, the only information a counsellor or student is obligated to give to the police is his/her name and address. Obviously, in most cases, it is appropriate to be as helpful as is reasonable in the circumstances. It is important nonetheless for a counsellor to determine how the information is to be used.

### II Guidelines for Court Appearances

The following suggestions are intended to apply to all levels of courts. When a point is specific to a particular court, it is so stated.

#### *Requests to Testify*

Any request that counsellors testify should take the form of a subpoena. Counsellors should insist on receiving subpoenas even in instances concerning which they would willingly appear in court. A subpoena states the time and place to which witnesses are to report in addition to the trial for which they are being summoned.

#### *Preparation for Court*

Counsellors should attempt to prepare themselves for examination and cross-examination by anticipating potential questions. Directives should be sought from the legal representative who is responsible for the case. Witnesses are more likely to be well briefed in relation to civil cases. In criminal cases, the Crown Attorney rarely has time to discuss testimony with witnesses, although an investigating officer for the court is normally dispatched to do so.

In terms of written preparation, it is appropriate to mention that witnesses are not entitled to have notes on the witness stand in courts unless the notes were made contemporaneous with the event.

#### *Court Proceedings*

Criminal court proceedings are characterized by a concern for adhering to the letter of the law. Evidence must be substantiated. Hearsay will generally not be considered. Spectators are permitted under normal circumstances.

In Youth Justice Court, the proceedings are more flexible with the aim being to help the child as effectively as possible. The Education Act and The Youth Criminal Justice Act apply in court. If the child pleads guilty, the opinions of those present, including counsellors, may be sought by the judge.

The Child and Family Services Amendment Act may also be applicable. The judge may seek the opinions of those present.

The following specific points pertain to counsellors’ actual attendance in court and testimony:

- (a) Often witnesses will have to wait a considerable length of time before being called. Indeed, a subpoenaed witness may not even be asked to testify. Similarly, the case may be remanded and witnesses involved will have to report at the newly scheduled time.
- (b) Witness fees are paid although the rates vary.
- (c) Counsellors should be judicious about materials they bring to court as any item thought to be pertinent may be requested by the court.
- (d) Obviously, it is advisable to be polite and demonstrate a reasonable attitude in giving testimony. Witnesses should under no circumstances argue with the lawyer or the judge. They should take the approach that their intent is to try to be of assistance to the court.
- (e) In responding to questions, counsellors are advised to direct their answers to the judge rather than the lawyer posing the questions.
- (f) It is permissible for witnesses to ask for clarification if the question posed is too vague.
- (g) In giving evidence, counsellors should restrict themselves to what they know or have perceived firsthand unless their opinions are specifically requested.
- (h) The following options should be considered by counsellors who are asked to reveal information which they think should be kept confidential:
  - Counsellors might briefly explain the reasons for their reluctance to give the information. The judge may decide that confidentiality should be respected.

- Counsellors may request that the courtroom be cleared while the information is discussed.
- (i) Counsellors, upon completion of their testimony, should ask the judge if they might depart. The judge will determine if they should remain for the purpose of being recalled to testify later.

### III Youth Criminal Justice Act (YCJA)

The Youth Criminal Justice Act (supplanting the Young Offenders' Act) became law on April 1, 2003. Following are some of the basic highlights of the new Act.

- Up until 1984, children in trouble with the law were called "juvenile delinquents." Then, under the Young Offenders Act they were renamed "young offenders." Starting April 1, 2003, they will now be called "young people" – even if convicted. The court for "young people" will be called Youth Justice Court.
- Police shall consider all alternatives for youths, including taking no further action, issuing a warning, issuing a caution (more serious), or referring the youth to a community agency or program.
- A range of extra-judicial sanctions is available for non-violent, first-time offenders who enter the court system and take responsibility for their actions. The sanctions include judicial reprimands, fines, and orders to perform services to the victim of a crime. Judges must dismiss criminal charges if the young person complies with the extra-judicial sanctions.
- New sentences in the YCJA include:
  - a) Reprimand (stern lecture from the judge)
  - b) Intensive Support and Supervision Order (closer monitoring and more support than a probation order)
  - c) Attendance Order (requires the young person to attend a program at specified times)
  - d) Deferred Custody and Supervision (allows a youth who would otherwise be sentenced to custody to serve the sentence in the community under conditions)
  - e) Intensive Rehabilitative Custody and Supervision (an alternative to adult sentences imposed for murder, attempted murder, manslaughter and aggravated sexual assault; open to youths with a mental illness, psychological or emotional disturbance; up to six years in a treatment centre followed by four years of community supervision).
- Publication bans prohibit identities of young people – victims, witnesses or the accused – from being released to the public, until a case is over, the youth is given an adult sentence and the parents consent. It is possible young murderers and young murder victims may never be identified.
- Victims will have increased rights. They will be consulted on alternative measures, offered apologies and allowed access to a convicted youth's criminal record.

- A judge can order an assessment to determine if a young person is in need of child welfare services.
- Youth sentences cannot be harsher than adult sentences for the same crime.
- Youths accused of serious violent offences can no longer be transferred to adult court for trial. All trials will take place in youth court, but upon conviction a Crown can seek an adult sentence. The age at which it is presumed youths will be sentenced as adults drops to 14 from 16.

Please refer to: <http://canada.justice.gc.ca/en/index.html> for complete information on the Youth Criminal Justice Act.

#### *Legally Speaking*

One of the primary changes from the Young Offenders Act to the Youth Criminal Justice Act is to confer statutory recognition on less formal, non-judicial responses to youth offending behaviour. The new Act sets out a number of less formal responses – such as police warnings, cautioning, referral to community programs, apologies to victims and acknowledgement and reparation of damages. The Act obliges police to consider the suitability of these less formal responses in each case and creates a presumption of their suitability with respect to non-violent first offenders.

#### *Pre-arrest Questioning*

In some situations, whether the questioning is being done by police or school personnel, counsellors may find themselves in positions of advocacy vis-à-vis the alleged young person especially in the absence of a parent.

#### *Assessment and Pre-disposition Reports*

Medical or psychological assessments may be ordered by the court at any stage of the proceedings, or may be requested by crown counsel, defence counsel, or the young person, to assess such characteristics as physical or mental illness, intellectual capabilities, or learning disabilities. Counsellors are often consulted in the development of such assessments. If the young person is found guilty, the judge may require a pre-disposition report. This report must be prepared if the disposition involves custody. As the name implies, the aim of such a report is to provide the judge with information which will lead to the most effective and appropriate disposition. The main guideline for counsellors as they contribute to assessments and pre-disposition reports relates to their legal context. It is essential that counsellors be thorough and professional when consulted by the person preparing the report. Since such consultations often take the form of phone calls in the midst of other tasks, the seriousness and eventual implications of the reports may be difficult to appreciate.

### IV Freedom of Information and Protection of Privacy Act, R.S.O. 1990

The above-named provincial act came into effect on January 1, 1988. As of that date, it applied to provincial government ministries, agencies, and departments with expansion of its domain taking place during the following three years.

A brochure published by the Freedom of Information and Privacy Branch, Management Board of Cabinet summarized the purposes of the Provincial Act in the following manner:

“The Act has two main objectives. First, it provides all persons with a legal right of access to information contained in the records of government ministries, agencies, boards, commissions and corporations. Secondly, it sets out the standards for privacy protection that must be met by all of these institutions when they collect, use and disclose information of a personal nature on individuals.

The Act consequently provides a balance between allowing the widest possible access to government information and respecting the right of each individual to personal privacy.”

The government officials responsible for accommodating the Act to such sectors as District Boards of Education are aware that considerable care must be taken especially regarding such information as that contained in the Ontario Student Record System. Counsellors may seek clarifications from their District School Board’s Freedom of Information Coordinator.

## V Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990

On January 1, 1991, the Freedom of Information and Protection of Privacy principles are extended by the Municipal Freedom of Information and Protection of Privacy Act, 1989 to a group of about 3,000 institutions including: municipal corporations, district school boards, public utilities commissions, hydro-electric commissions, transit commissions, police commissions, conservation authorities, boards of health and other local boards.

This act is based on the principles found in the Freedom of Information Act, 1987. First, information held by an institution covered should, in general, be available to the public. Second, any exception from the right of access to information should be limited to specific specifications. Third, decisions relating to access to information should be reviewed by the independent Information and Privacy Commissioner.

Another important principle is that personal information held by institutions should be protected from unauthorized disclosure. To give effect to this principle, the act has a number of provisions dealing with the collection, use and disclosure of personal information.

Counsellors may seek clarification from their District School Board’s Freedom of Information Co-ordinator.

## PIM (Privacy and Information Management) Taskforce

The PIM Taskforce toolkit provides practical suggestions with respect to records maintenance and privacy issues. It makes reference to portions of applicable legislation including the Municipal Freedom of Information and Privacy Act (MFIPPA), R.S.O. 1990, c.M.56; Personal Health Information Protection Act (PHIPA), S.O. 2004, c.3, Sched. A; and Education Act, R.S.O. 1990, c.E.2. The information contained in this document is for general reference purposes and should not be

construed as legal advice. You should consult with your own legal counsel for the purposes of interpretation.

To ensure that it supports all Ontario school boards and authorities, the toolkit has been developed around five guiding principles:

- Aligned with the provision of programs and services to students;
- Inclusive across the school board/authority and for all school boards/authorities (small and large, English and French, public and Catholic);
- Written in plain language, avoiding jargon/acronyms;
- Relevant to school boards/authorities (meaningful, practical and scalable);
- Ethically and legally relevant.

Of particular interest to counselors are the following topics:

- Information sharing between secondary schools and feeder schools
- Guidelines for securing mobile devices
- Working outside of the office or school
- School board/authority website guidelines
- Maintenance of Records (records versus non-records)
- Privacy breach protocol

## VI Glossary of Legal Terms

This section should familiarize counsellors with the legal jargon that may be encountered in their work. The explanations are not legal definitions but are intended to be interpretations acceptable for the counsellor’s use. Only qualified lawyers could assess the applicability of a particular concept to a given situation.

See also, Justice for Children and Youth, <http://www.jfcy.org>.

### *Confidential Communication*

The ethical decision by a counsellor that he should not divulge what has been revealed to him in his contact with a counsellee.

### *Privileged Communication*

Utterances made in connection with official duties against which no legal action can be taken. Privileged Communication refers to the right of the client of professional persons to prevent these persons from revealing in legal proceedings any information given in confidence as a result of the professional relationship.

### *Absolute Privilege*

All communications of judges while on the bench, of legislators in the house, and of witnesses under oath, are accorded absolute privilege. Lawyers may not divulge information, incriminating or otherwise, as testimony or at the behest of government or legal officials.

### *Qualified Privileged Communications*

Ministers and doctors in Ontario are usually considered to have privileged communication. If a counsellor were required to testify it is very doubtful that he would be allowed privileged communication. The rules are not hard and fast. The judge would decide in an individual case. By way of comparison, communication in many jurisdictions in the United States even if defamatory may be privileged if the following conditions are met:

- 1) the communication originates with the understanding that it will not be disclosed;
- 2) confidentiality must be maintained for continuance of the relationship between the parties;
- 3) confidentiality must be fostered with care and perseverance;
- 4) the harm to the relationships would be greater than the good incurred in the litigation.

#### *Defamation*

Communication tending to harm a person's reputation so as to lower him in the estimation of the community or to deter people from associating with him. Statements must have been false and/or made with malicious intent and must be made to a third party.

#### *Hearsay*

What some other person has said. Hearsay is not usually accepted as an indication of evidence of the existence of the fact. What a counsellee tells a counsellor would almost always be hearsay evidence.

#### *Liability*

A breach of what has been established as a legal duty. In addition to proving a breach of duty, a successful liability suit must show that damages have resulted.

#### *Libel*

Defamatory communication that is written.

#### *Malpractice*

A term used more often in the United States to describe any

professional misconduct or any unreasonable lack of skill or fidelity in the performance of professional or fiduciary duties. Since an Ontario school counsellor is not defined in law, malpractice would be difficult to assess.

#### *Negligence*

Failure to perform, or the unsatisfactory performance of a legal duty imposed by statute or common law.

A negligence action might be based on the unintentional breach of a legal duty causing damage reasonably foreseeable, without which breach the damage would not have occurred. The counsellor might be held negligent if he gave incorrect educational information.

#### *Privacy*

The right to live without unwarranted interference by the public about matters with which the public is not necessarily concerned. Invasion of privacy refers to the interruption of private communication.

#### *Slander*

Defamatory communication that is spoken.

#### *Third Party*

Any person not involved in the original dialogue.

#### *Unethical Behaviour*

Behaviour at variance with the moral precepts and ethical principles suggested by a professional organization. Ethical behaviour is not a matter of law.



## Maintenance of Records

1. Counsellors must possess a thorough understanding of Ministry/District School Board policies with regard to the retention, storage, preservation and security of records. (Ontario Student Record Guideline)
2. Counsellors, when keeping notes or records, must ensure that they are stored in a manner that protects confidentiality and guarantees security.
3. Records collected during the counselling relationship may include: notes, assessment data, correspondence and other information gathered or received from other sources. All records possessed by counsellors must comply with the regulations outlined in the current OSR Guidelines and in the Freedom of Information and Privacy Protection Act.
4. Records document the specific nature of the contact and contain only information that is relevant and useful to the understanding of the situation and what action resulted from the contact. The records must be factual in nature and written with the assumption that someone else might read the information if the records are subpoenaed or with permission of the counsellee or his/her parents.
5. Counsellors must understand their Board's policies and procedures with respect to access to and disclosure of confidential client information to: other Boards of Education; outside professionals; and community, social or government agencies. In the absence of any Board policy the guideline to be applied is that the transfer of information will occur only with the written consent of the client (if under 18, then a parent or guardian) and/or when required by law.
6. Counsellors understand that clients have a right to access their counselling records.

#### *Legally Speaking*

Section 266 of the Education Act and Ontario Student Record Guideline govern the law with respect to student records. See also the discussion in Confidentiality on page 22.





## Support Workers in the Guidance Office

Working with Paraprofessionals and Other Professionals

Guidance Counsellors who find themselves being supported in their jobs by counselling paraprofessionals or other professionals (e.g., Social Workers, Child and Youth Workers, Public Health Nurses, Doctors, etc.) should consider the following:

1. A clear job description should be developed that specifies the scope and limitations of the position. All process considerations and a hierarchy of authority should be established in advance and clearly understood by all parties. Ideally this should happen at the District School Board level. Remember that paraprofessionals and other professionals are not necessarily governed by the laws of the Education Act. All parties need to be made acutely aware of those areas where conflict may occur.
2. The job description should clearly indicate that the counselling paraprofessional never exists instead of the qualified Guidance counsellor, but rather acts in support of and under the supervision of the Guidance counsellor.
3. The school counselling paraprofessional should be hired, assigned appropriate duties, supervised, and evaluated by the on-site individual responsible for the leadership of the Guidance Department, with input from administrators and school Board personal where appropriate.
4. An in-depth orientation must be provided for all paraprofessionals and other professionals working in a Guidance Office with frequent opportunities for ongoing professional development.

## References/Resources

### Hard Copy

Choices Into Action, Guidance and Career Education Program Policy for Ontario Elementary and Secondary Schools, 1999, Ontario Ministry of Education, ISBN 0-7778-8454-2

Counselling Ethics Casebook 2000, Canadian Counselling Association, ISBN 0-9697966-1-7

Education Statutes and Regulations of Ontario, 2006, Butterworth Edition, ISBN 0-433-45053-3

Ontario Curriculum, Grades 9 to 12, Guidance and Career Education, Ontario Ministry of Education, 1999 and 2000, ISBN 0-7778-83449 and ISBN 0-7778-9190-5

Ontario Curriculum, Grades 9 to 12, Program Planning and Assessment, Ontario Ministry of Education, 2000, SBN 0-7778-9199-9

Ontario Secondary Schools, Grades 9 to 12, Program and Diploma Requirements, Ontario Ministry of Education, 1999, ISBN 0-7778-8456-9

Ontario Student Record Guideline, 2000, Ontario Ministry of Education, ISBN 0-7778-9244-8

PIM Toolkit

A Joint MiSA OASBO Initiative 2008

Sexual Misconduct in Education, Bowers, Knox, Zuker, LexisNexis, Butterworths, 2003, ISBN 0-433-44170-4

Student Discipline: A Guide to the Safe Schools Act, Jennifer E. Trepanier, LexisNexis, Butterworths, 2003, ISBN 0-433-44330-8

School Law 2002, A Reference Guide for Ontario, Ontario Secondary School Teachers' Federation, SBN 0-920930-77-8

Standards of Practice for the Teaching Profession, Ontario College of Teachers, 1999

### Web-Based (*All Websites were live at time of printing.*)

American Counseling Association [www.counseling.org](http://www.counseling.org)

American School Counselor Association [www.schoolcounselor.org](http://www.schoolcounselor.org)

British Association for Counselling [www.bacp.co.uk](http://www.bacp.co.uk)

Canadian Counselling Association [www.ccacc.ca](http://www.ccacc.ca)

Children's Aid Society of Toronto Reporting Child Abuse & Neglect [casmt.on.ca](http://casmt.on.ca)

Department of Justice [www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)

Education Law Reporter [www.edlawcanada.com](http://www.edlawcanada.com)

Education Policy and Program Update to June 2009 [www.edu.gov.on.ca](http://www.edu.gov.on.ca)

Elementary Teachers' Federation of Ontario [www.etfo.ca](http://www.etfo.ca)

Justice for Children and Youth [www.jfcy.org](http://www.jfcy.org)

National Board for Certified Counselors [www.nbcc.org](http://www.nbcc.org)

Ontario College of Teachers [www.oct.on.ca](http://www.oct.on.ca)

Ontario English Catholic Teachers' Association [www.oecta.on.ca](http://www.oecta.on.ca)

Ontario Ministry of Education [www.edu.gov.on.ca](http://www.edu.gov.on.ca)

Ontario School Counsellors' Association [www.osca.ca](http://www.osca.ca)

Ontario Secondary School Teachers' Federation [www.osstf.on.ca](http://www.osstf.on.ca)



## Appendices

- Appendix A: The Child and Family Services Amendment Act
- Appendix B: Ethical Standards for the Teaching Profession
- Appendix C: Age-based Legal Milestones
- Appendix D: Professional Misconduct, Ontario College of Teachers
- Appendix E: Professional Advisory, Professional Misconduct Related to Sexual Abuse and Sexual Misconduct, Ontario College of Teachers
- Appendix F: The Student Protection Act

### Appendix A



## The Child and Family Services Amendment Act

In May of 1999, the government of Ontario passed Bill 6, the Child and Family Services Amendment Act. This legislation has significance for all teachers because it lowers the threshold for reporting children suffering abuse or at risk of suffering abuse. It contains an ongoing requirement to report, requires teachers to report directly to the Children's Aid Society, and provides fines for failure to report.

### Summary of the Changes

An abbreviated summary of the amendments of the Child and Family Services Act:

1. Requires that any person, including professionals, has a duty to report if they have reasonable grounds to suspect any one or more of a number of criteria.
2. Creates an ongoing duty to report, where there are additional grounds to suspect that the child is in need of

protection, even where a report has already been made.

3. Creates a duty to report the matter personally, rather than relying on another to report the matter.
4. Expands the offence provision and liability to cover all failures to report when a child is in need of protection, instead of only instances where abuse is suspected.

### Duties and Responsibilities of Teachers

1. Teachers must make themselves aware and knowledgeable of existing Board policies and procedures regarding responsibilities under the Child and Family Services Act.
2. If a teacher has reasonable grounds to suspect that a student is suffering abuse or at risk of suffering abuse, the teacher has a duty and responsibility to report personally to

the Children's Aid Society. The Act requires that an individual has an obligation to report personally.

3. If a teacher has additional reasonable grounds to suspect that a student is suffering abuse or at risk of suffering abuse, the teacher has a duty and responsibility to make further reports personally to the Children's Aid Society.
4. Responsibility to report to the Children's Aid Society regarding students who are suffering abuse or at risk of suffering abuse based upon reasonable grounds, applies to every person who performs professional or official duties with respect to children.
5. Failure to report suspicion of abuse to a Children's Aid Society could result in a fine.

For complete information on the Child and Family Services Amendment Act, please refer to: [www.casmt.on.ca](http://www.casmt.on.ca).



**Ontario College of Teachers  
Ordre des enseignantes et des enseignants de l'Ontario**

## **Ethical Standards for the Teaching Profession**

*The teaching profession fosters the growth of dedicated and competent educators. Members of the profession uphold the dignity and honour of the profession through their practice.*

*Members of the Ontario College of Teachers in their positions of trust and influence:*

- maintain professional relationships with students
- recognize and respect the privileged nature of the relationship that teachers maintain with students
- demonstrate impartial and consistent respect for all students as individuals with distinctive and ongoing learning needs and capacities
- respect confidential information about students unless disclosure is required by law or personal safety is at risk
- model respect for human dignity, spiritual values, cultural values, freedom, social justice, democracy and the environment
- work with members of the College and others to create a professional environment that supports the social, physical, intellectual, spiritual, cultural, moral and emotional development of students
- base relationships with parents or guardians in their role as partners in the education of students, on respect, trust, and communication
- co-operate with professionals from other agencies in the interest of students and as required by law
- act with integrity, honesty, fairness and dignity
- respect the confidential nature of information about members of the College obtained in the course of professional practice unless disclosure is required by law or personal safety is at risk
- comply with the Acts and regulations
- advise the appropriate people in a professional manner when policies or practices exist that should be reviewed or revised.

APPROVED BY COUNCIL – JUNE 8, 2000

### **THE OVERALL PURPOSES OF ETHICAL STANDARDS STATEMENTS ARE:**

- to clarify the ethics of the profession
- to inspire the quality of behaviour which reflects the honour and dignity of the profession
- to encourage and emphasize those positive attributes of professional conduct which characterize strong and effective teaching
- to enable the profession to declare itself publicly accountable.

**The ethical standards combined with the standards of practice will serve as the foundation for all accredited pre-service and in-service programs for teachers in Ontario.**

## When can I ...

- ... **Be charged for a criminal act?**
- ... **See a doctor or talk to a counsellor by myself?**
- ... **Buy and drink alcohol?**
- ... **Quit school?**

This site gives general information about age-based laws in Ontario. Speak to a lawyer about specific questions.

### UNDER 12

#### • Starting School

You can start school when you are 4 (or will be turning 4 between Sept 1st and Dec 31st of that school year) if your school board offers junior kindergarten, or when you are 5 (or will be turning 5 between Sept 1st and Dec 31st of that school year) if your school board offers senior kindergarten.

You are required to attend school at age 6 [Education Act]

- Your consent is required for you to be adopted once you turn 7 [Child and Family Services Act]
- If you have serious criminal-type behaviour (examples: killing or badly injuring someone, or destroying property), your parents are supposed to provide treatment or consent to treatment to correct this behaviour. If your parents do not do this, you can be taken into the care of a Children's Aid Society. [Child and Family Services Act]
- You can be ordered by a court to go into a treatment program for a mental health issue. There may be restrictions on what you can do and where you can go. This requires consent by the Minister for Children and Youth Services. [Child and Family Services Act]

### 12 & OVER

- You can consent to sexual activity only with a person who is less than 2 years older, except with a person in a position of authority or trust [Criminal Code of Canada]
- You can be charged for provincial offences and your parents will be notified. Examples: skipping school, jaywalking and trespassing. [Provincial Offences Act]
- You can be charged for federal criminal offences and your

parents will be notified. Examples: shoplifting, assault and having a weapon or drugs.

[Youth Criminal Justice Act]

- Your consent is required to have your name changed [Change of Name Act]
- Your consent is required if your parents want to place you with a Children's Aid Society [Child and Family Services Act]
- If you are in the care of a Children's Aid Society, you can apply to the court to have this changed [Child and Family Services Act]
- You can see a counsellor or therapist without your parent's knowledge or consent [Child and Family Services Act]
- The court can order you into a treatment program if you have a mental health issue. There may be restrictions on what you can do and where you can go. [Child and Family Services Act]

### 14 & OVER

- You can consent to sexual activity only with a person who is within 5 years of your age, except with a person in a position of authority or trust [Criminal Code of Canada]
- You can live with someone else against the wishes of your legal guardian. The other person will not be charged with a criminal offence as long as they did not assist you in leaving home. [Criminal Code of Canada]
- You can be given an adult sentence for more serious criminal offences. Examples: murder, attempted murder, manslaughter, and sexual assault involving serious violence [Youth Criminal Justice Act]
- **Quitting School**  
The law on quitting school changed on January 1st, 2007. You are now required to attend school (or an equivalent learning program approved by the Ministry of Education) until you are 18 years old.

### UNDER 16

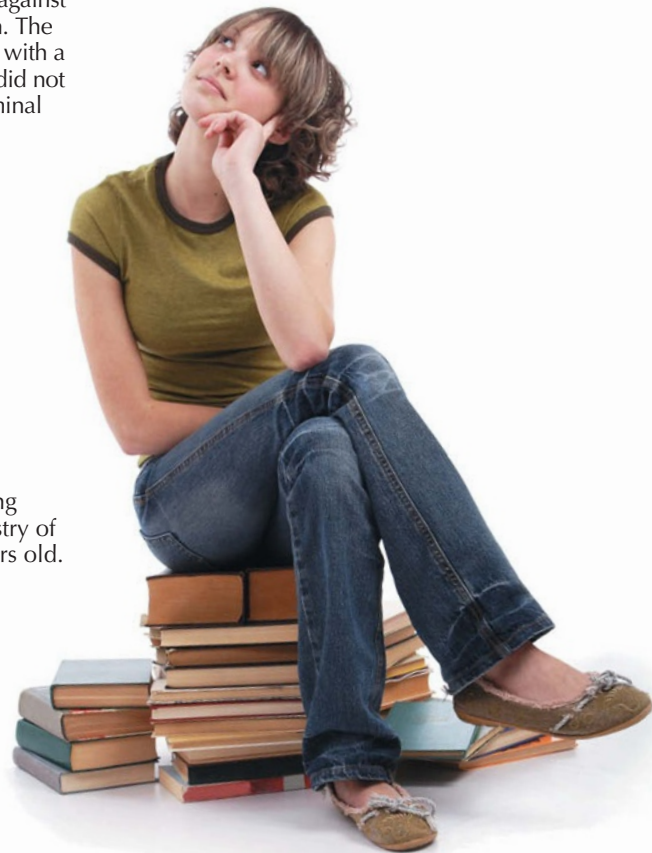
- If there are concerns about your parents providing for your health or safety, you can be removed from your home and taken to a safe place or brought into the care of a Children's Aid Society. The court may be involved in

deciding how to keep you safe. [Child and Family Services Act & Children's Law Reform Act]

- Between midnight and 6 a.m. you are not allowed to be in a public place unless you are with your parents (or with another person over 18 and with your parents' permission) [Child and Family Services Act]
- You are competent to appoint and instruct your own lawyer for legal proceedings about your admission into a facility for people with mental illnesses [Mental Health Act]
- Your legal guardian may exercise your rights to privacy and access to information but not in respect of health care to which you consent on your own [Municipal Freedom of Information and Protection of Privacy Act]

### 16 & OVER

- You can:
  - Withdraw from your parent's control (i.e. leave home) but you may lose your right to financial support [Child and Family Services Act, Children's Law Reform Act, & Family Law Act]
  - Apply for a beginner's driver's license [Highway Traffic Act]





## Summary of Age-Based Legal Milestones for Youth in Ontario, Canada

- Get married with your parents’ consent, a court order or permission from the Minister of Consumer & Business Services [Marriage Act]
  - Change your name with your parents’ consent or a court order [Change of Name Act]
  - Provide an advance care directive to refuse emergency medical treatment [Health Care Consent Act]
  - You can consent to sexual activity except with a person in a position of authority or trust (i.e. teacher, coach, doctor, lawyer) [Criminal Code of Canada]
  - You are considered an adult under the Provincial Offences Act, i.e. your parents will not be notified about any charges
  - If you are not married, you can apply and receive social assistance in special circumstances. Examples: you are kicked out or forced to leave home because of abuse. [Ontario Works Act]
  - You are protected from age discrimination when looking for housing [Ontario Human Rights Code]
  - You can not be brought into the care of a Children’s Aid Society [Child Family Services Act]
  - You have the right to be involved in decisions about your special education needs [Education Act]
  - If you have withdrawn from parental control, you may have the right to appeal school-related decisions, i.e. suspensions and expulsions [Common law & Education Act]
  - You can protect your right to privacy of, and exercise access to, your own personal information. This includes information collected by your school, libraries and the police. [Municipal Freedom of Information and Protection of Privacy Act]
  - In case you become incapable of making decisions, you can appoint a substitute decision maker for medical treatment and personal care decisions. This person must follow your treatment wishes that you made after you turned 16. You can also be appointed as a substitute decision maker for someone else. [Health Care Consent Act & Substitute Decisions Act]
  - You are considered an adult for the purposes of the Mental Health Act, i.e. you can apply for a court order to place you in treatment program for mental health issues. [Child and Family Services Act]
- UNDER 18**
- The United Nations Convention on the Rights of the Child applies to you. This international agreement sets out minimum and basic standards that all people under 18 should be entitled to. These standards include your right to protection from abuse and exploitation, and respect for your views.
  - You are required to attend school or an approved training program unless you have graduated high school [Education Act]
  - You can be paid reduced minimum wage if you are a student and work 28 hours or less per week [Employment Standards Act]
  - Your parents may be sued for damages caused by you if they failed to reasonably supervise and control you, i.e. depending on your maturity level. [Common Law, Parental Responsibility Act, Age of Majority and Accountability Act]
  - You can be sued on contracts for necessities (example: housing) and for goods and services if you benefit from the contract [Common Law, Age of Majority and Accountability Act]
  - You require a “litigation guardian” (an adult to represent you) to sue someone or be sued unless a court orders that you be allowed to do so on your own [Rules of Civil Procedure, Age of Majority and Accountability Act]
  - A “litigation guardian” may be ordered to represent you in legal proceedings where you are not a party but your interests require separate representation [Rules of Civil Procedure]
- 18 & OVER**
- You are considered an adult under the:
    - Criminal Code of Canada (i.e. your parents will not be notified if you are charged)
    - Age of Majority and Accountability Act (i.e. you can sue or be sued in your own name)
  - Ontario Election Act and Canada Elections Act (i.e. you can vote)
  - Education Act (i.e. you can appeal a suspension or expulsion without your parents’ involvement)
  - Children’s Law Reform Act (i.e. your parent’s custody and access orders about you can no longer be enforced)
  - A court can no longer make child protection orders for you and any existing child protection orders automatically end unless continued care and maintenance for you is approved by a Children’s Aid Society [Child and Family Services Act]
  - You are no longer entitled to financial support from your parents unless you are in school full time [Family Law Act]
  - You are entitled to receive full minimum wage [Employment Standards Act]
  - You are protected from age discrimination under the Ontario Human Rights Code. For example:
    - an employer should not refuse to hire you for a job simply because they think a person your age can not handle the responsibilities of the job
    - a landlord can not refuse to rent you an apartment because they think youth can not reliably pay the rent
    - a doctor or counsellor can not refuse to treat you based on your age
  - You can serve on a board of directors of a corporation [Business Corporations Act, Ontario Corporations Act]
  - You can also:
    - change your name [Change of Name Act]
    - enter into contracts [Common Law, Sale of Goods Act]
    - make a will [Succession Law Reform Act]
    - get married [Marriage Act]
    - see a restricted movie [Film Classification Act]
    - buy a lottery ticket [Ontario Lottery and Gaming Corporation Act]
    - apply for social assistance without having to show special circumstances (as described on page 9) [Ontario Works Act]

- appoint or be appointed as a substitute decision-maker with respect to property matters [Substitute Decisions Act]
- quit school [Education Act]

### 19 & OVER

You can:

- buy alcohol [Liquor Licence Act]
- buy tobacco [Tobacco Control Act]
- apply for the GST credit [Income Tax Act]
- be on gaming premises and take part in gaming activities (i.e. casinos, racetracks) [Ontario Lottery and Gaming Corporation Act]

### NON AGE-BASED MILESTONES (i.e. it does not matter how old you are)

- You have a right to see your Ontario School Record [Education Act]
- You have a right to attend school in the school board district where your parents live. If you are living on your own, you have a right to attend school in the school board district where you live. [Education Act]
- You can drink alcohol in a non-public space if it is supplied by your parents [Liquor Licence Act]
- You can consent to health care treatment according to your ability to understand the treatment you are seeking and not based on your age [Health Care Consent Act]
- Single parents of any age are eligible for social assistance, if needed [Ontario Works Act]
- Parents, married or common-law persons of any age can claim the GST refund credit [Income Tax Act]
- Married persons or those in the military can make a will at any age [Succession Law Reform Act]
- The Canadian Charter of Rights and Freedoms protects you from laws that discriminate against you based on age
- The Canada Human Rights Act protects you from age discrimination in working for and receiving services from federal agencies, such as Canada Post, national airlines, chartered banks, First Nations employers and telephone companies.

**For 24-hour, toll-free, confidential phone counselling, referral and information contact the Kids Help Phone at 1-800-668-6868**

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Justice for Children and Youth  
<http://www.jfcy.org/agebased.html>

### Ontario Regulation 437/97 Section 1

The following acts are defined as professional misconduct for the purpose of subsection 30 (2) of the Act:

1. Providing false information or documents to the College or any other person with respect to the member's professional qualifications.
2. Inappropriately using a term, title or designation indicating a specialization in the profession which is not specified on the member's certificate of qualification and registration.
3. Permitting, counselling or assisting any person who is not a member to represent himself or herself as a member of the College.
4. Using a name other than the member's name, as set out in the register, in the course of his or her professional duties.
5. Failing to maintain the standards of the profession.
6. Releasing or disclosing information about a student to a person other than the student or, if the student is a minor, the student's parent or guardian. The release or disclosure of information is not an act of professional misconduct if,
  - i. the student (or if the student is a minor, the student's parent or guardian) consents to the release or disclosure, or
  - ii. if the release or disclosure is required or allowed by law.
7. Abusing a student physically, sexually, verbally, psychologically or emotionally.
8. Practising or purporting to practise the profession while under the influence of any substance or while adversely affected by any dysfunction,
  - i. which the member knows or ought to know impairs the member's ability to practise, and
  - ii. in respect of which treatment has previously been recommended, ordered or prescribed but the member has failed to follow the treatment.
9. Contravening a term, condition or limitation imposed on the member's certificate of qualification and registration.
10. Failing to keep records as required by his or her professional duties.
11. Failing to supervise adequately a person who is under the professional supervision of the member.
12. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false, improper or misleading statement.

13. Falsifying a record relating to the member's professional responsibilities.
14. Failing to comply with the Act, the regulations or the bylaws.
15. Failing to comply with the Education Act or the regulations made under that Act, if the member is subject to that Act.
16. Contravening a law if the contravention is relevant to the member's suitability to hold a certificate of qualification and registration.
17. Contravening a law if the contravention has caused or may cause a student who is under the member's professional supervision to be put at or to remain at risk.
18. An act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
19. Conduct unbecoming a member.
20. Failing to appear before a panel of the Investigation Committee to be cautioned or admonished, if the Investigation Committee has required the member to appear under clause 26(5)(c) of the Act.
21. Failing to comply with an order of a panel of the Discipline Committee or an order of a panel of the Fitness to Practise Committee.
22. Failing to co-operate in a College investigation.
23. Failing to take reasonable steps to ensure that requested information is provided in a complete and accurate manner if the member is required to provide information to the College under the Act and the regulations.
24. Failing to abide by a written undertaking given by the member to the College or an agreement entered into by the member with the College.
25. Failing to respond adequately or within a reasonable time to a written inquiry from the College.
26. Practising the profession while the member is in a conflict of interest.
27. Failing to comply with the member's duty under the Child and Family Services Act.

### Section 2

A finding of incompetence, professional misconduct or a similar finding against a member by a governing authority of the teaching profession in a jurisdiction other than Ontario that is based on facts that would, in the opinion of the Discipline Committee, constitute professional misconduct as defined in section 1, is defined as professional misconduct for the purposes of subsection 30 (2) of the Act.



Ontario College of Teachers

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## PROFESSIONAL ADVISORY

### *Professional Misconduct Related to Sexual Abuse and Sexual Misconduct*

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**Approved by Council September 27, 2002**

The Council of the Ontario College of Teachers has approved this Professional Advisory. The intent of this advisory is to help members of the College identify the legal, ethical and professional parameters that govern their behaviour and to prevent sexual abuse of students and sexual misconduct. This advisory is not to be construed as providing an exhaustive list of unacceptable behaviours, but rather is intended to provide examples and guidance.

The authority of the College to investigate complaints against members of the College and to deal with issues of professional

misconduct is stated in the *Ontario College of Teachers Act*. The Investigation Committee and the Discipline Committee of the College may consider this advisory when reviewing allegations of professional misconduct. The Discipline Committee will determine, in each case, whether particular behaviour amounts to professional misconduct.

The term “sexual abuse” is defined by the *Student Protection Act*. That definition is set out below. The term “sexual misconduct” is used in this advisory to refer to any behaviour of a sexual nature which may constitute professional misconduct.

*Members of the College should consult their employer’s policies to ensure that they are familiar with all expectations and obligations that may exist in their particular workplaces and communities related to the contents of this professional advisory.*

*This advisory applies to all members of the Ontario College of Teachers, including but not limited to teachers, consultants, vice-principals, principals, supervisory officers, directors of education and those working in non-school board positions.*

### Why an advisory on professional misconduct of a sexual nature?

Public and professional sensitivity to and awareness of sexual abuse and sexual misconduct has increased in recent years, not only in teaching but also in other professions, particularly where people are in positions of trust and moral authority. In April 2000, the provincial government released the report of former Justice Sydney L. Robins *Protecting Our Students: A review to identify and prevent sexual misconduct in Ontario schools*. This report made numerous recommendations for the teaching profession, including a recommendation for the College to clarify and elaborate on members' obligations and professional duties.

### Student Protection Act

In June 2002, the Ontario legislature passed Bill 101, the *Student Protection Act*. This Act modified existing legislation and placed new obligations on members of the profession. The College has undertaken to issue this professional advisory as the *Student Protection Act* comes into force.

### Building on the standards of practice and the ethical standards

Members of the College demonstrate care for and commitment to students that require them to act in students' best interests and report suspicious behaviour or allegations of professional misconduct of a sexual nature to appropriate authorities. Members must take a student's disclosure of abuse or exploitation seriously, even if some allegations prove to be unfounded. Dealing with victim disclosure requires professional judgement. This advisory provides some criteria to assist members in using their judgement.

Members maintain professional relationships with students and recognize the trust that the public places in them. They are aware of the negative impact of boundary violations on students. They respond professionally to victims' allegations by collaborating with other professionals such as police, child and family services, and College investigators.

This advisory helps clarify members' responsibilities to the profession — to govern their own conduct and to understand clearly what conduct by other members does not conform to professional standards, provincial law and the Criminal Code.

Understanding the legal, ethical and professional parameters of behaviour is central to a member's successful career. This advisory helps members recognize when they are at risk of breaching those parameters.

Even though many of the behaviours described here may be unthinkable to most members, the College has the obligation to identify them so that the parameters of professional behaviour are clear.

Ignorance of the law or College regulations is not an acceptable excuse. Engaging in sexual abuse of students or sexual misconduct is a form of professional misconduct and will result in an investigation and disciplinary action by the College. Consequences may include the suspension or revocation of a member's certificate of qualification and membership in the teaching profession.

### Sexual abuse

Sexual abuse is a form of professional misconduct. The *Student Protection Act* defines sexual abuse of a student and amends the *Ontario College of Teachers Act* to include this definition:

- (i) sexual intercourse or other forms of physical sexual relations between the member and a student,
- (ii) touching, of a sexual nature, of the student by the member, or
- (iii) behaviour or remarks of a sexual nature by the member towards the student.

Accordingly, members should avoid:

- sexual relations or sexual intercourse with a student
- any form of sexual touching of a student
- any sexual contact including behaviour or remarks of a sexual nature, regardless of the age of the student or any apparent consent by the student.

### Professional misconduct

Professional misconduct includes, but is not limited to, sexual abuse of a student by a member. Professional misconduct of a sexual nature could involve a member's own students, other students or children, or even adults, if the Discipline Committee of the College determines that the behaviour amounts to an act defined as professional misconduct.

There may be forms of professional misconduct that do not fall within the definition of sexual abuse but which may be considered sexual misconduct. These behaviours could nonetheless fall within the definition of sexual misconduct and constitute professional misconduct. These behaviours may include sexual harassment and sexual relationships with students or any conduct which may lead to an unprofessional and inappropriate relationship with a student. The latter is often called grooming behaviour.

The College deals with complaints made by members, employers and the public. Written complaints of alleged sexual abuse of a student or sexual misconduct have to be investigated by the College if they fall within the definition of professional misconduct.

Ultimately, the determination of whether particular behaviour constitutes professional misconduct will be made by the Discipline Committee based on the definition of sexual abuse, as well as the other definitions of



professional misconduct contained in Regulation 437/97 - The Professional Misconduct Regulation — including:

- 1(5) failing to maintain the standards of the profession
- 1(7) abusing a student physically, sexually, verbally, psychologically, or emotionally
- 1(14) failing to comply with the [Ontario College of Teachers] Act, the regulations or the bylaws
- 1(15) failing to comply with the *Education Act* or the regulations made under that Act, if the member is subject to that Act
- 1(16) contravening a law if the contravention is relevant to the member's suitability to hold a certificate of qualification and registration
- 1(17) contravening a law if the contravention has caused or may cause a student who is under the member's professional supervision to be put at or to remain at risk
- 1(18) an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional
- 1(19) conduct unbecoming a member.

### Sexual harassment

Inappropriate behaviour or remarks of a sexual nature which may constitute professional misconduct include, but are not limited to, conduct that would amount to sexual harassment or sexual discrimination under the *Ontario Human Rights Code*. These need not be overtly sexual but may nonetheless demean or cause personal embarrassment to a student, based upon a student's gender, race or sexual orientation.

Members should avoid even a single event that may constitute sexual harassment, including but not limited to:

- objectionable conduct or comments incompatible with the role of a member, regardless of whether the affected students appear to be offended by the conduct or comments
- sexual harassment of non-students or of co-workers
- reprisals or threatened reprisals for rejecting sexual advances.

### Sexual relationships

Regardless of the age of a student and whether there are any criminal law considerations, a member engaging in or attempting to establish a sexual relationship with a student is unacceptable.

Professional misconduct includes but is not limited to any sexual relationship with

- (i) a student, regardless of the student's age
- (ii) a former student under the age of 18
- (iii) a former student who suffers from a disability affecting his or her ability to consent to a relationship.

Responsibility for ensuring that a member-student relationship is professional and appropriate rests with the member and not with the student. This remains the case even when it is the student who attempts to initiate an inappropriate relationship. Any conduct directed to establishing such a relationship may constitute professional misconduct.

It is not necessary that the student be in the member's own class. A student may be a student who is in the school or school system where the member is employed, or in relation to whom a member is otherwise considered to hold a position of trust and responsibility.

Members should not engage in activity directed to establishing a sexual relationship. This includes, but is not limited to:

- sending intimate letters to students
- making telephone calls of a personal nature to students
- engaging in sexualized dialogue through the Internet with students
- making suggestive comments to students
- dating students.

Such conduct is inappropriate even if the conduct does not result in the establishment of a relationship.

Engaging in a sexual relationship with a person who is under the age of 18, or in relation to whom the member holds a position of trust or authority, may also constitute professional misconduct, regardless of whether the person is a student or former student.

### Knowing the limits - the responsibility of each member

There are situations, activities and actions where members should be cautious. Even though an action or event may seem to be in a student's best interest, members need to consider thoroughly the implications and appearance of the action or event beforehand.

Members have an additional responsibility to avoid activities that may reasonably raise concerns as to their propriety. Keeping this in mind can help members avoid complaints to either their employer or to the College, and can help protect students by detecting and preventing sexual abuse or sexual misconduct by others.

### Using good judgement

Members understand that students depend on teachers to interpret what is right and wrong. This judgement can be difficult when certain acts seem innocent, but may be considered later as a prelude to sexual abuse or sexual misconduct.

In the interests of student safety, when members use their professional judgement about their own or

others' activities they should be mindful of these and other considerations:

- whether the activities are known to, or approved by, supervisors and/or parents or legal guardians
- whether the student is physically isolated from other observers, for example, behind closed doors
- whether the circumstances are urgent or an emergency (providing transportation in a blizzard, for example)
- whether the educational environment might be detrimentally affected by the activities
- whether the activity would reasonably be regarded as conduct intended to promote or facilitate an inappropriate personal relationship with a student
- the extent to which the activities might reasonably be regarded as posing a risk to the personal integrity or security of a student, or as contributing to any student's level of discomfort
- whether the conduct would reasonably be regarded as being in the best interests of the student.

#### Members should avoid:

- inviting individual students to their homes
- seeing students in private and isolated situations
- exchanging personal notes, comments or e-mails
- becoming personally involved in students' affairs
- giving personal gifts to students
- sharing personal information about themselves
- making physical contact of a sexual nature.

When meeting with students, members should, whenever possible, ensure that:

- classroom and office doors are left open
- a third party is present or aware of the meeting
- the student is not physically isolated from other observers, for example, behind closed doors
- they are not alone with an individual student except in urgent or emergency circumstances.

#### Reporting suspected or alleged inappropriate sexual behaviour

If a member of the College has reasonable grounds to suspect sexual abuse of students or sexual misconduct, a member has a responsibility to report suspected or alleged cases to appropriate authorities. This includes one or more or all of the following: child and family services, police, the employer and the Ontario College of Teachers.

#### Adverse report and anti-reprisal provisions

The *Student Protection Act* also amended the *Teaching Profession Act*. A member who makes an adverse report about another member respecting suspected sexual abuse of a student by that other member need not provide him or her with a copy of the report or with any information about the report.

Members of the College may not engage in, or threaten to engage in, reprisals against anyone who discloses, reports or otherwise provides information with respect to alleged or suspected professional misconduct of a sexual nature.

#### Employer responsibilities

Similarly, employers were previously required to report to the College members who had been convicted of an offence under the Criminal Code involving sexual conduct and minors. The *Student Protection Act* stipulates that employers must now report to the College at the time a member is charged with a sexual offence.

#### Responsibility of the Ontario College of Teachers

The Investigation Committee of the College is responsible for investigating complaints relating to a member's alleged professional misconduct, incompetence or incapacity. Allegations of misconduct may result in charges under Regulation 437/97 made under the *Ontario College of Teachers Act*. If the Investigation Committee refers a case to the Discipline Committee, a panel of the Discipline Committee will conduct a hearing to determine whether the alleged conduct constitutes professional misconduct.

*If members of the College or the public have questions about the content of this advisory, please contact the College at 416-961-8800 or toll free in Ontario at 1-888-534-2222, or e-mail [info@oct.on.ca](mailto:info@oct.on.ca).*

#### Legislative references

*Ontario College of Teachers Act*  
*Education Act*  
*Regulation 437/97, Professional Misconduct* made under the *Ontario College of Teachers Act*  
*Teaching Profession Act*  
*Child and Family Services Act*  
*Ontario Human Rights Code*



Ontario College of Teachers

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## The Student Protection Act, 2002: A Summary

The Student Protection Act, 2002 is designed to better protect young people from sexual abuse, especially in Ontario's schools. The Act sets a clear definition of sexual abuse. It provides the Ontario College of Teachers with the added authority it needs to take strong action against those who would harm children.

- It requires all employers to report to the Ontario College of Teachers a certified teacher charged with a sexual offence against a student. School Boards as well as public schools, private schools, tutoring companies and other organizations are required to report misconduct if they employ teachers certified by the Ontario College of Teachers to instruct students.
- The Act defines sexual abuse in a comprehensive way so that in addition to sexual assault, students would also be better protected from sexual harassment.
- It ensures that any teacher in a publicly funded school is removed from the classroom if he or she is charged with sexual assault against a student.
- It improves information-sharing, making it much more difficult for a teacher who has been disciplined for sexual abuse to quit and move from one Board or school to another, undetected.
- Employers of certified teachers would face fines, upon conviction, for breaking the reporting rules.
- The Act clarifies that teachers are not required to inform their colleagues when making a report about them with regard to sexual abuse. The Ministry of Education will work to extend this to all situations where a student may be at risk of potential harm.

The legislation responds to recommendations from retired Court of Appeal Justice, Sydney L. Robins. It ensures that teachers and their governing body have the same professional standards and expectations as various regulated health professionals, including doctors and nurses.

**Please see Appendix E:** Professional Advisory: Professional Misconduct Related to Sexual Abuse and Sexual Misconduct.

For complete details on the Student Protection Act, please refer to the following url: [www.ontla.on.ca/library/bills/101372.htm](http://www.ontla.on.ca/library/bills/101372.htm).

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## New Curriculum is Released!

The Wood Manufacturing Council has been updating the original WoodLINKS curriculum and adding sub-sectors so schools can tailor their programs to match their local industry partners. This new WoodLINKS curriculum is now available!

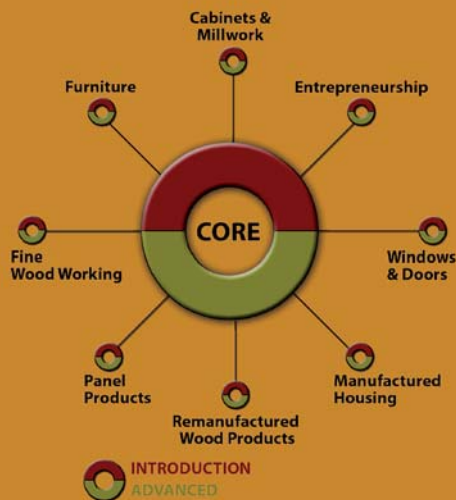
The enhancements to the curriculum were guided by industry advisors and committees from each of the sub-sectors. The revised curriculum was then reviewed by educators experienced working with WoodLINKS.

WoodLINKS core skills are the foundation for subsequent areas of specialization and are grouped into Work Readiness and Wood Manufacturing. These core skills include both theoretical knowledge and lots of hands-on skills developed through the completion of exercises and class projects.

Students who successfully complete the core curriculum and a specialization area receive a WoodLINKS certification.



### WoodLINKS Curriculum



*"I became aware of WoodLINKS at a province-wide conference for Guidance Counsellors and I was so happy with what I heard and saw that I almost could not believe it: here was an industry organization looking to reach out and help educators, which is a nice change from us having to pound the pavement and make many phone calls in order to establish contacts. Affiliation with WoodLINKS has been very beneficial to our school, thanks to the exposure it has given myself and other teachers within the department to various sectors of the wood industry, as well as unique opportunities for students such as the Freshwood Competition."*

**Colin Sell**

Department Head, Technological Studies  
Fletcher Meadow SS

For more information on the WoodLINKS program please contact the Wood Manufacturing Council 616-567-5511 [wmc@wmc-ckb.ca](mailto:wmc@wmc-ckb.ca)

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