

Legal Primer for School Psychology Practitioners

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Sponsored by

College of Psychologists of British Columbia

School Psychology Workshop

May 30, 2008

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**This paper is intended for information purposes only and is not a substitute for legal advice. You should seek the assistance of a lawyer if you have questions about your professional obligations.

LEGAL AND PROFESSIONAL OBLIGATIONS OF SCHOOL PSYCHOLOGY PRACTITIONERS – A CHECKLIST

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1. School Psychology Practitioners practising in British Columbia are subject to a number of legal and professional obligations, some obvious, some not. School Psychology Practitioners in particular work situations, such as those working for school boards, working as registered psychologists, working as teachers, or working in special education or alternate school programs, can have greater and more complex obligations, as other statutes and rules are brought into play.
2. The following checklist has been prepared as a quick reference for statutory, professional or contractual obligations which might apply to a school psychologist. This checklist may assist School Psychology Practitioners to identify and consider their legal obligations when confronted by ethical issues in their work.
3. Note that the following list is not comprehensive and may not be applicable to all situations, given the variety of employment arrangements in which a school psychologist may engage.
 - A. LEGAL AND PROFESSIONAL STANDARDS: PSYCHOLOGICAL SERVICES
4. School Psychology Practitioners are professionals who meet professional standards of ethical conduct relating to the provision of psychological services.
5. Members of the BC Association of School Psychologists (BCASP) must, on pain of being expelled from the association, or subjected to another penalty under section 3.3.3 of the BCASP Constitution, comply with the Standards for Professional Practice for Members of the BC Association of School Psychologists and with the Code of Ethics for the Canadian Association of School Psychologists (“A member may be expelled from the society for conduct deemed unacceptable by a review committee.... After investigation, the Executive Committee may expel a member or provide such lesser penalty as may be deemed appropriate.”)
6. Some School Psychology Practitioners may also be registrants of the College of Psychologists of British Columbia, and as such will be bound by the College of Psychologist’s Code of Conduct. The Code of Conduct of the College is available on the College of Psychologist’s website (<http://www.collegeofpsychologists.bc.ca/>).

7. A School Psychology Practitioner who is not a registrant of the College may nonetheless wish to review the College's Code, which represents a detailed standard of professional conduct for psychological practice which has been enacted under statute. The College also produces Practice Advisories which clarify common professional standards and practice issues. If the BCASP Standards do not address a particular situation, the College Code or practice advisories may point to a proper course of action.
8. Generally, the BCASP Standards and the College Code address similar topics. (For simplicity, this discussion does not include the Code of Ethics for the Canadian Association of School Psychologists.) This listing is not comprehensive:
 - a. Competency, treatment areas and referral
 - Offer only services within an individual's area of training and expertise: BCASP 2.2; Code 3.3
 - Refer to other specialists where appropriate: BCASP 2.4; Code 3.4 (referral when in the best interests of the client); Code 5.12 (referral when requested by client)
 - Refer to other professionals respecting conditions outside one's treatment competencies: BCASP 5.C.2; Code 3.26 (issue beyond competence)
 - cooperation with other psychologists and professionals and agencies: BCASP 3.D.2; Code 7.8 (work with others in a professional, cooperative manner) and Code 7.15 (must cooperate with other professional service providers providing services of a related nature where appropriate to serve the client effectively)
 - Continue professional development by learning new methodologies, research and technology: BCASP 2.3; Code 3.5 (maintaining competency) and Code 3.24 (ensuring necessary knowledge, training and experience in assessments and interventions being conducted)
 - e.g., "Best Practice Guidelines for the Assessment, Diagnosis and Identification of Students with Learning Disabilities" (2007)
 - b. Conflicts and dual roles
 - Serve the best interests of clients: BCASP 4.A.1; Code 5.1 (act in accordance with the client's welfare)

- Refrain from activities where personal problems or conflicts may interfere with professional effectiveness: BCASP 4.A.2; Code 5.21 and 5.22 (duty to refrain or withdraw where impaired capacity)
 - Do not exploit professional relationships with clients or colleagues: BCASP 3.A.3; Code 5.4 (no special benefits from relationship with client); Code 5.5 (no abuse of information or power); Code 5.6 (no use of information for own benefit); Code 5.7 (no influencing clients to gift or contribute to institutions in which professional has a direct interest); Code 5.9 (no misuse of influence); Code 5.10 (no accepting client gifts of more than token value); 5.18 & 5.19 (prohibited conduct relating to clients or former clients)
 - Avoid possible conflicts of interest (actual or perceived): BCASP 4.E.1; Code 5.13 (duty to clarify issues when providing services to several individuals); Code 5.14 (duty to withdraw when identifying conflicting roles with multiple clients); Code 5.17 (duty to avoid dual relationships)
- c. Informed Consent or Assent
- Explain outcomes of services in a manner understood by the student: BCASP 3.B.3; Code 4.9 (inform patient about process, procedures and methods); Code 4.8 (use understandable language); Code 5.2 (explanation of procedures); Code 5.3 (disclosure of assessment results)
 - Explain to the student who will receive information about the student: BCASP 3.B.4; Code 5.15 (duty to clarify roles and any limits on the obligation of confidentiality where services provided at the request of a third party); Code 6.1 (duty to explain the limits of confidentiality); Code 6.9 and 6.10 (duty to explain the limits of confidentiality where the client is a minor, but a guardian may agree in advance that certain issues will not be disclosed to the guardian)
 - Communicate with parents re: strategies, results and confidentiality: BCASP 3.C.1 to 6
 - ** Obtain informed written consent from parents or legal guardians prior to assessing or providing direct service to a student “who is under the legal age”: BCASP 4.D.1; Code 4.1 (no services without informed consent); Code 4.3 (where lack of capacity to consent, obtain informed consent of guardian)

NOTE: Under the common law, a minor may give fully informed consent to medical treatment if he or she has sufficient maturity, intelligence and

capability of understanding what is involved in making informed choices about a proposed medical treatment. If a minor does not have these qualities, he or she cannot give informed consent and consent must be given by a parent or guardian. If, however, a minor is capable of giving informed consent, the parent or guardian no longer has any overriding right to give or withhold consent. *Van Mol (Guardian ad litem of) v. Ashmore*, 1999 BCCA 6 at paragraph 75 (and also 89 and 140). "All rights in relation to giving or withholding consent will then be held entirely by the child."

Also see the Infants Act, below.

- Obtain informed consent by advising of the purpose and nature of services, responsibilities, the option to refuse or withdraw from service, and rescinding consent: BCASP 4.D.4; Code 4.2 (elements of informed consent)
- d. Confidentiality
- Be guided by the personal and confidential nature of information obtained in an assessment of a student: BCASP 4.C.1; Code 6.2 (except as permitted by the Code, a registrant may only disclose confidential information with written consent); Code 6.16 (confidentiality after the professional relationship has ended)
 - ** Duty to communicate with parents regarding assessment, counselling and intervention strategies and results: BCASP 3.C.1; Code 6.4 (where more than one party having an interest in the services rendered to a client, registrant must clarify the dimensions of confidentiality applying to the services)
 - Comply with legal requirements relating to their practice (which would include reporting under child protection legislation, see below): BCASP 5.A.1; Code 1.6 (legal requirements prevail); Code 6.7 and 6.8 (registrant may disclose information where necessary to protect against a "clear and substantial risk of imminent serious harm being inflicted by the client on the client or on another individual")
- e. Record Keeping
- Maintain the confidentiality of records: BCASP 4.C.2 (storage & disposal), 4.C.3 (transmission of records); Code 14.1 and 14.2 (security of records) and 14.3 (confidentiality of records)

- Note that under the common law, clients have an interest in information, and a right of access to such information, which a health provider has obtained in the course of providing treatment, including reports or materials provided by other health care providers: *McInerney v. MacDonald*, [1992] 2 S.C.R. 138. This right is expressed in Code 6.12 (duty to provide access and permit reproduction of information about a client to that client unless there is a significant likelihood that disclosure would cause a substantial adverse effect on the client's physical, mental or emotional health, or harm to a third party).
- Maintaining test security, restricting access to psychological tests to those qualified to use them, and observing copyright law: BCASP 5.E.1 and 2; Code 11.15 (duty to take reasonable efforts to maintain the integrity and security of tests and other assessment techniques)

B. LEGAL AND PROFESSIONAL STANDARDS: TEACHING PROFESSION

9. School Psychology Practitioners may also be teaching professionals, and in particular, members of the British Columbia College of Teachers.
10. School Psychology Practitioners who are members of the College of Teachers will be subject to regulation by that College even when not performing teaching duties per se.
11. Conduct which may or may not be addressed by professional standards from a psychological services perspective may, instead or concurrently, amount to professional misconduct or conduct unbecoming a member under the Teaching Profession Act.
12. This means that even if conduct does not violate a standard applying to psychological service professionals, a School Psychologist should consider whether conduct may run afoul of standards applying to teaching professionals.
13. The BC College of Teachers publishes a document called, "Standards for the Education, Competence and Professional Conduct of Educators in British Columbia" on its website (<http://www.bcct.ca>), as well as Discipline Decisions which illustrate findings of misconduct or conduct unbecoming.
14. As will be noted below, unethical conduct may amount to a breach of an employment obligation, and if a School Psychologist who is a member of the College of Teachers is suspended by a superintendent of schools, or is disciplined for misconduct that involves, for example, "significant emotional harm to a student or minor", a report must be sent by the superintendent to the College of Teachers under section 16 of the School Act,

and this will constitute a complaint under the discipline process of the College of Teachers.

15. School Psychology Practitioners may also be members of the British Columbia Teachers Federation. BCTF members are bound by a Code of Ethics.
16. The Code of Ethics is available at the BCTF website.
(<http://www.bctf.ca/ProfessionalResponsibility.aspx?id=4292>)
17. The Code of Ethics requires every BCTF teacher to respect the confidential nature of information concerning students, and to “give it only to authorized persons or agencies directly concerned with their welfare”.
18. The Code of Ethics also requires every BCTF teacher to refrain from exploiting any relationship with a student for material, ideological or other advantage.

C. OTHER LEGAL AND PROFESSIONAL STANDARDS

19. School Psychology Practitioners may hold membership in other professional regulated bodies or voluntary associations. Those who do should be aware of the professional obligations arising from those memberships.

D. CHILD PROTECTION LEGISLATION

20. The Child, Family and Community Service Act creates reporting obligations regarding the protection of children that actually supersede certain obligations imposed by other statutes.
21. Section 13 sets out the circumstances in which a child is deemed to require protection (note that the case law indicates that this is not an exhaustive list).
22. Subsections 14(1) and 14(2) create a positive duty for a person to report to government authorities when that person has reason to believe a child “needs protection”, even where the information on which the belief is based is privileged (except where protected by solicitor-client privilege) or confidential and its disclosure is prohibited by another statute.
23. Subsections 14(3) and (5) make the failure to report an offence punishable by fine, imprisonment or both.

E. MEDICAL TREATMENT LEGISLATION

24. The Infants Act allows an “infant” to consent to receiving health care without a health care provider obtaining consent to treatment from the infant’s parent or guardian. Section 17(3) of the Infants Act requires, however, that the consent be

informed consent: the health care provider must be “satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care”.

25. The health care provider must also make “reasonable efforts to determine” and must conclude that the health care is in the infant’s best interests.

F. PRIVACY LEGISLATION

26. The Freedom of Information and Protection of Privacy Act (the “FOI Act”) sets out a person’s rights regarding access to personal information held by public bodies (such as ministries, universities and hospitals) and determines how those public bodies may collect, use and disclose personal information.

27. As “personal information” under the Act includes health information and “public body” includes schools, the Act applies to client records and other personal information created or collected by School Psychology Practitioners.

28. If a patient’s records belong to the School Psychologist, instead of the public body, then the Personal Information Privacy Act applies. This statute governs the collection, use, store and disclose personal information about clients, customers, employees and volunteers by persons and organizations in the private sector. Personal information includes identifying, contact and medical information.

29. Note Part 7 of PIPA, which requires every organization to provide, on an individual’s request, that individual’s personal information under the organization’s control, under section 23(1) or (2). PIPA also provides in section 23(4), however, that personal information must not be disclosed where disclosure could reasonably be expected to “cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request”, or to “threaten the safety or physical or mental health of an individual other than the individual who made the request,” or reveal personal information about another individual”.

G. EMPLOYMENT OBLIGATIONS

- Collective Agreement

30. If a School Psychologist is subject to any collective agreement, he or she could also bound by duties to employer or the union.

Employment Contracts

31. If a School Psychologist is employed under an individual contract of employment, he or she will be bound by contractual duties to the employer which may include implied duties.
32. For example, employment in a professional capacity may involve an implied duty to act professionally, which means that conduct which is unprofessional in the sense of violating a professional standard may be a basis for discipline or dismissal from an employment perspective.

 School Policies

33. As an employee, a School Psychologist will be subject to the any policies of their school regarding conduct in the workplace.

 School District

34. The school district that the registrant works in may also have guidelines or policies governing how the registrant deals with specific.

H. OTHER LEGAL OBLIGATIONS

 Standardized Psychological Tests

35. If a registrant is using standardized psychological testing protocols in order to conduct assessments on his or her clients, the registrant may have contractual obligations to the creator/publisher of the test protocol to keep that information confidential.