

Notebook on Ethics, Legal Issues, and Standards in Counselling
Glenn Sheppard, Ed.D, CCC

Sexual Abuse of Clients: A Continuing Concern in the Helping Professions

I recently received two major reports on the sexual abuse of clients by their professional helpers. The first is entitled **Professional Therapy Never Includes Sex** published by the Department of Consumer Affairs, State of California. The other is a Canadian report entitled **“What about accountability to the patient?”** A Final Report of the Special Task Force on the Sexual Abuse of Patients. As part of the mandatory five year review of the Ontario Regulated Health Professions Act (RHPA) in 2000, the Ontario Health Professions Regulatory Advisory Council (HPRAC) established an independent task group to examine a number of important issues with respect to the sexual abuse of patients by individuals to whom they have gone for professional help.

This report is the Task Group’s final submission to the Ontario Minister of Health and the HPRAC. It contains poignant comments from some of the 57 victims who made representation to the Group and 34 recommendations on steps that could be taken to stop the sexual abuse of clients. The Task Group was chaired by Marilou McPhedan.

A Clear and Unequivocal Judgment.

This report to the HPRAC contains a lengthy quote from a 1998 judgment issued by Justice J. Aitken of the Ontario Court of Justice, General Division, in the case of the sexual abuse of a client by her psychologist. I have decided to include it in this Notebook because it is such a crisp and unequivocal judgment on one of the most destructive violations of fiduciary relationships;

“She went to him for help at a time when she was particularly vulnerable and insecure. He had the professional knowledge to help her, but instead used that knowledge to manipulate the situation to his own advantage, playing on [her] lack of confidence, her search for a positive father figure and her sexual inhibitions. In these circumstances, as has been attested by Dr. Jackson and Dr. Freebusy, [the patient] could not exercise free will. Her participation in sexual activities with Dr. B. [a psychologist] was not based on any understanding on her part as to what was really happening. He kept her in a constant state of confusion as to whether his advances were part of her treatment, evidence of his love for her, or something else. This was coupled with her overwhelming dependency on him, which he let develop unchecked, so that she was rendered incapable of coming to her own assessments or conclusions. There could be no genuine consent in these circumstances. Therefore even/thing from the initial touching to the hugging, kissing, fondling, masturbating and finally intercourse were all forms of battery.

I agree with McLachlin J. that ‘... where such a power imbalance exists it matters not what the patient may have done, how seductively she may have dressed, how compliant she may have appeared, or how self interested her conduct may have been the doctor will be at fault if sexual exploitation occurs.’
(Norberg v. Wynrib (1992), 92
D.L.R. (4th) 449 (S.C.C.) p. 497)

Exploitation did occur in this case, and the sole responsibility for that rests with Dr. B. There can be no doubt that (the therapist) owed fiduciary obligations to [the patient] when he took her on as a client within his clinical psychology practice. It is also equally clear that he breached those obligations by totally ignoring what were appropriate therapist-client boundaries and particularly by initiating and maintaining a sexual relationship with her. The obligation was on him and him alone to ensure the appropriate boundaries were maintained. By breaching them, he put his own needs ahead of those of

[his patient]. He did not do this on just one occasion. He did it repeatedly form August 1990 to August 1995, and arguably beyond.”

The court in this case awarded the plaintiff damages in the amount of \$326, 275.98.

CCA members are invited to become familiar with the section entitled **‘Sexual Intimacies with Clients’** in our **Standards of Practice for Counsellors** and with the chapter on boundary violations on our **Ethics Casebook**.

Comments on this issue of the Notebook are invited and we continue to welcome contributions to this feature of our newsletter.