

Notebook on Ethics, Legal Issues and Standards in Counselling

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When Counsellors Cease to Practice

There are many legal, ethical, and personal issues that may arise when counsellors cease their professional counselling practice. The cessation of counselling practice may be permanent or temporary, sudden or well planned and gradual, and can occur for a wide variety of reasons, including: disciplinary action, illness, disability, death, retirement, or other personal reasons. Whatever the reason for such a decision, counsellors should be aware of the concerns that typically arise under such circumstances and understand the many obligations associated with any such event.

- The mode of practice is one critical factor to consider in planning for the cessation of counselling services. Since work environments vary from sole practitioner to partnerships, public and private service corporations, and so forth, it is essential to be aware of all the expectations and obligations associated with the mode of practice in which the counsellor is working. It may be necessary to seek legal counsel since there can be legal obligations beyond those typically associated with the practice of counselling. In some work settings the appropriate legal advice may be available from the employer.
- Counsellors can best prepare for the inevitable termination of their practice by seeking to understand and clarify at the very beginning of their professional employment or practice partnerships all the relevant expectations and obligations, including what happens when they cease to practice.
- Whatever the circumstances of the cessation counsellors continue to have an overriding obligation to fulfill their ethical obligations to their clients. These include, managing client confidentiality, obtaining informed consent, the security and disposition of client records, taking steps to avoid client abandonment, and respecting restrictions on the sale of a practice.
- CCA members working in private practice are expected to maintain client counselling records for at least seven years. This period could be longer in other employment situations and where there may be other expectations with respect to records. Counsellors should ensure that following termination of practice client records are secured long enough to meet these obligations and that they are accessible to clients for treatment, legal, or personal needs. Retention of records can also help to assist the counsellor should there be an ethical complaint lodged against the counsellor following the cessation of practice or should there be liability against the counsellor's estate.
- An estate executor acts on the wishes of the deceased counsellor with respect to his/her professional obligations. This could include determining a location where client records can be stored, notifying clients of the death of the counsellor and where their records are secured, obtaining the wishes of the clients regarding the disposition of their records, and obtaining the consent of the clients to transfer their records. Counsellors are advised to develop the directions to be followed with respect to their professional obligations in case they continue to have such obligations at the time of their death.

- Counselling records should not be transferred to another professional without the consent of the client. In general, clients should have the choice of obtaining a copy of their record, having the record transferred to another practitioner, or agreeing to have their record remain in storage. Clients should be notified of the location when their records are stored in the offices of another practitioner. Newspaper announcements can assist with a notification about the closing of a practice, particularly to difficult to find clients and also serve to provide general information to them as to who to contact with respect to their counselling records.
- The sudden termination of counselling services due to an unexpected illness or disability, or the sudden death of a counsellor would not be considered as client abandonment. Nevertheless, counsellors can act to minimize any negative consequences for their clients by developing plans in case of such events and making these plans known to the clients either within the counselling discourse or by way of agency literature made available to clients.
- When counsellors are aware ahead of time that their practice will cease within a known time frame they should begin the process of counselling termination with those clients for whom it is appropriate to do so. For clients needing continued counselling services, counsellors should begin a briefing process with them to facilitate referrals to other practitioners. These may be colleagues within the counsellor's workplace or to practitioners working in other locations. In any case, counsellors should act to meet the requirements of informed consent during this transfer process. (See page 26 , CCA Standards of Practice for Counsellors)
- Counsellors may consider selling their private practice. However, only tangible assets can be sold and the names of clients and their records cannot be included in such a sale. If a counsellor wanted to transfer her/his clients to a new practitioner/owner this could only be accomplished by following an informed consent process for each client in which each client would decide whether or not his/her name and/or his counselling record could be transferred.

Clearly, the cessation of a counselling practice, for whatever reason, and whether temporary or permanent can be a challenging process with many associated obligations. The paramount consideration for all counsellors in such circumstances is to act in ways to fulfill their ethical and legal responsibilities and in a manner to avoid or minimize any harm for their clients.

A Useful Resource for Counsellors

There have been situations in which counsellors and other professionals have been asked to submit to the court or legally constituted tribunal information about the scoring procedures and other psychometric protocols involved in the scoring of psychometric instruments such as the Wechsler Intelligence Scales. Disclosure of this type of information can have the effect of invalidating the future use of these instruments and impairing the ability of the publishers to engage in responsible commercial practices as well as violating copyright protection. Despite necessary and appropriate protest counsellors and others may receive a court order or subpoena to comply. Should you receive such a request or know of a colleague facing such a challenge you can find very helpful information at the website of the Psychological Corporation that provides policies, legal arguments and some case law on such matters. Counsellors and their lawyers are directed to <http://psychocorp.com/sub/legalaffairs/releasepolicy.html>. Should the psychometric instruments involved in the dispute be published by the Psychological Corporation you are invited to call them for further advice.

I extend my thanks to Dr Todd Kettner, a psychologist in Nelson, BC for making this information available.

As always, I invite members to contact me with respect to this Notebook entry. You might wish to submit a response to this topic that could be published in the next Cognica. The invitation is once again extended to all our members to consider making a contribution to the Notebook on any ethical, legal, or standards issue that might be of interest to professional counsellors in Canada.