

NOTEBOOK ON ETHICS, LEGAL ISSUES, AND STANDARDS FOR COUNSELLORS

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I am delighted to welcome Dan and Lawrence as our first guests to the Notebook column. They are CCA members who have thought a lot about the ethical challenges associated with counsellors' use of the internet in their professional work. I invite others to follow their lead and make their contribution to the Notebook.

Glenn Sheppard

Ethics, E-mail, and the Counselling Profession

By Dan L. Mitchell and Lawrence J. Murphy

Using e-mail for communication with colleagues and other professionals is an everyday experience for most counsellors. Communicating with clients via e-mail is less common. Nevertheless, many counsellors do exchange e-mail correspondence with clients, even if it is to clarify a billing issue. In spite of our daily use of e-mail, we may not be aware that there are several practical and ethical issues that deserve close examination. Our intention, in this article, is to alert counsellors to potentially serious problems and to consider the options available to prevent such problems.

“What if” Scenario

You were able to grab a bite to eat for lunch today. It's Tuesday, 12:55 p.m. and you decide to check your e-mail before your one o'clock counselling session.

You find three messages. One of them is from a sender you do not recognize. Your first instinct is that it must be junk mail, but then you notice the subject line: “Please Help!”

Upon opening the message, your emotional alarm bells resound as you read these words:

“Hi I'm at the end of my rope. No one is helping. This time I'll make sure it works...”

You know you need to take action, but what can you do? You look for a name, a phone number or any identifying information. You check the e-mail address hoping for some kind of clue. It is no help at all: bluejay374@hotmail.com.”

Fighting back the urge to panic, you print out a copy of the e-mail distress call and give it to your secretary hoping he will know what to do. He does not. But he offers to call the police to see if they might know how to trace the origins of the message.

“Good idea.” you say, as you try to pull yourself together to focus on your client who is now in your waiting room...

Although this is a fictitious scenario, it could be real. The message could have been a disclosure of child abuse. Or it could have revealed a possible intention to commit homicide. We need to assume that it is only a matter of time until we receive an emergency e-mail message.

Practical and Ethical Concerns

Clearly there are many concerns of both a practical and an ethical nature. When counsellor e-mail addresses are freely available, the following are some of the more serious challenges:

1. Client confidentiality

Most counselling agencies and clinical practitioners own regular e-mail addresses (i.e., not secure) and make those addresses public, whether in advertising or on business cards and stationary. Once that address is out there in the world, it is available for anyone to use who has internet access.

Regular email is not secure and does not protect client confidentiality. Although you may simply be writing to acknowledge a new session date and time, the client may respond with highly confidential information (e.g., "I'm actually glad I have another week to think about thing, I've remembered some more details since we talked last week about...")

2. Domain names

Many e-mail addresses owned and made public by counselling agencies and clinical practitioners contain domain names that reveal their professional identity. (A domain name is the portion of an e-mail address that follows the "@") Publicizing such e-mail addresses does not protect client confidentiality. For example, imagine a client, using her home computer that her children also use, who sends a regular e-mail message to info@counsellorbob.ca. With default e-mail settings, computers store copies of all outgoing messages. Unless she deletes her "Sent Items", her children could easily discover that Mom is seeking personal counselling.

3. Inability to act in an emergency

If clients or prospective clients convey emergency information using regular e-mail, counselling practices and agencies may be powerless to take action, since regular e-mail may not contain enough information to trace its geographic origin.

This is quite unlike the experience of someone telephoning into an agency and disclosing suicidal thoughts. With the client on the telephone there is the opportunity to talk with him, perhaps to book an appointment or to refer him to emergency assistance. In such a case, you at least know that the client has received your communication. In an acute emergency, police can trace a telephone call, and dispatch appropriate emergency assistance.

4. Liability Insurance

It is as yet unclear whether professional liability insurance will cover counselling professionals who have not minimized the exposures (risks) noted above.

Possible Resolutions

We suggest that counselling agencies and clinical practitioners consider the following options:

1. Refrain from publishing regular e-mail addresses. This option, while ethically sound, may be neither convenient for clients nor helpful for practitioners and agencies attempting to market their services.
2. Publish regular e-mail addresses with a clearly visible warning that clients must waive their right to confidentiality. This option gives clients an opportunity to choose whether they are willing to waive their right to confidentiality.

While a warning informs clients of the confidentiality issue, it raises other important questions. If clients wish to gain access to professional counsellors via e-mail, is it ethical to ask them to give up their right to confidentiality to cover our inability to protect them? Would a “non-confidentiality” waiver stand up to legal scrutiny?

In order to address the domain name issue (the 2nd ethical concern noted above), e-mail addresses that are published should be either generic (e.g., info@hotmail.com, info@yahoo.com) or in some other way obscure any affiliation with the counselling profession (e.g., info@tlcobc.com).

A further necessity, if counsellors implement this second option is that the warning must also contain a request that clients include basic contact information. This, then, would allow practitioners and agencies to act on emergencies.

However this, too, is a weak solution because the warning and the request contradict each other. If anything, the warning about the lack of confidentiality would influence clients to avoid discussing private matters. We put them in a bind if they must include their private residential address or telephone number in an insecure e-mail message.

3. Provide for clients secure e-mail with contact information collection capability. This option resolves several issues, but special attention must be given to the following:

First, if counsellors must provide secure e-mail for their clients, does this mean that clients will be required to download and install special software? If so, there is a risk that the process of downloading and installing software may cause clients further distress. Ideally, whatever secure e-mail solution is provided, the process for clients should minimize any technical demands or expertise. In addition, telephone contact should be offered in case clients encounter technical difficulties.

Second, the domain name issue remains. Professionals should choose an e-mail security method whose domain name obscures and affiliation with counselling.

Third, the process of providing clients with secure e-mail should be integrated with the collection of their contact information. This minimizes the burden on clients to supply contact information in a separate process. In addition, the process of collecting and storing contact information should be secure (by housing the database on a secure server for example). Otherwise, again, confidentiality is compromised.

Conclusion: Awareness and Appropriate Technology

The experience in most professions today is that the rapid pace of technological advances speeds ahead of ethical considerations. The counselling profession is no exception. Ethical and practical issues that pertain to the publication of regular e-mail addresses have not been widely recognized in the

counselling profession. Most ethical codes that specifically address the topic of internet communications with clients stipulate the necessity of securing those communications so that the confidentiality of information is assured. It is more than a hyperbole to suggest that the use of insecure e-mail by counselling professionals may be the single most ubiquitous breach of counselling ethics in our profession's history.

Awareness is the first priority. In raising the issue, we want to encourage discussion and reflection. As the profession takes a closer look at the use of e-mail, we hope that counsellors will be inspired to take action to select and utilize appropriate security technology. Solutions do exist. The truth is that it would not be too difficult for a knowledgeable hacker to monitor, steal, and publish a sensitive e-mail going into or out of a counselling office. A former spouse, for example, could do a great deal of damage to both their former partner and to the counselling profession as a whole with such a simple act. It is incumbent on us to make sure that this kind of disaster simply cannot happen.

Dan L. Mitchell, CCC, and Lawrence J. Murphy are the founders of Therapy Online (www.therapy-online.ca), and online counselling service established in 1995. They have been pioneers in the development of secure technological solutions for counsellors, pertinent ethical codes, and online counselling skills.

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