

# **Notebook on Ethics, Legal Issues, and Standards of Practice for Counsellors and Psychotherapists**

## ***Allegations of Professional Misconduct Against a Counsellor (An Arbitration Case)***

By Glenn Sheppard

I have decided for this Notebook to report on an arbitration case because it involves a grievance based primarily on alleged professional misconduct by a Counsellor. It provides insight into how the Arbitrator dealt with each of the allegations. Also, this case highlights the complex environments in which some counsellors work and its associated challenges.

The case is entitled the **Halifax Employer's Association (HEA) v The Halifax Longshoreman's Association (HLA), Local 269 (Union)**. The Arbitrator was Michel G. Picher and the name of the counsellor and the employees involved are not disclosed in this public Report. The Union's grievance application concerned how the employer was delivering a Substance Abuse Program for its members. The HEA had asked Medavie Blue Cross to sponsor this program and it contracted with a national Employee Assistance Program (EAP) to deliver it. The person who was key to this delivery was a Counsellor in the Halifax area who was a local service provider for the EAP. The main objective of the program was to assess certain employees for substance abuse problems, and if they were determined to be substance dependent, to disclose this to their employer and to provide addictions counselling services to them.

The Union alleged a wide range of professional violations by the EAP Counsellor. These included: his not being qualified to provide the professional service, being in a conflict of interest by being both the assessor and the counsellor, breaches of employees' confidentiality and privacy, inappropriate location of his office, and inappropriate communication with employees who were his counselling clients.

I have dealt with each of these allegations in turn and included the Arbitrator's decision for each of them.

### **Issue 1**

#### **The Counsellor's Qualifications:**

The Union stated in its grievance that the counsellor was not registered or licensed by either the *Nova Scotia College of Counselling Therapist* or the *Nova Scotia Psychology Board* nor was he certified as an alcohol and drug counsellor by the *Canadian Addiction Counsellor's Certification Federation*. Their position was that he did not have the necessary professional preparation and was therefore not qualified to make drug dependency assessments, make the related recommendations, or to provide substance dependency counselling. Of course the employer challenged this claim and submitted its own arguments as to why they believed the counsellor

was qualified to perform these responsibilities. They also submitted their position to the Arbitrator on all the other allegations.

In addressing this first claim the Arbitrator considered the Counsellor's credentials and listed the following information in his Report:

- *Held a Masters of Education Degree with qualifications as a **Registered Professional Counsellor (RPC)**. He held that status while he was a member in good standing of the Canadian Counselling and Psychotherapy Association.*
- *He had the status of **Master Practitioner of Counselling Psychology (MPCP)** as members of the Canadian College of Professional Counsellors and Psychotherapist (CCPCP)*
- *A member in good standing of the Canadian Professional Counsellor Association*

He also noted that the Counsellor had more than 25 years of counselling experience and that included a one year internship with the Nova Scotia Drug Dependency Commission.

After his review, including his consideration of the Employer's submission, the Arbitrator concluded that the counsellor had the qualifications to perform the duties assigned to him by the EAP agency as a substance abuse counsellor for HEA employees. So this claim was dismissed.

## **Issue 2**

### **The Counsellor's Conflict of Interest:**

The Union position that the counsellor was in a conflict of interest was expressed as follows:

*The Union takes particular exception to the fact that on a number of occasions Counsellor J assessed employees who had been referred to him, found them to be dependent on drugs or alcohol and then recommended that they attend counselling sessions with him. The duality of those roles, that of assessment and treatment, in the Union's view, constituted a conflict of interest contrary to ethical standards which govern the practice of counsellors and psychotherapist.*

The Union argued that the Counsellor's referral-to-self benefitted him financially and point to one employee who saw the Counsellor once per week for a considerable time as an example of this benefit.

The Arbitrator observed that it was not the Counsellor himself who referred an employee to him for assessment and subsequent counselling if needed, but the EAP company holding the contract for this service. He also consulted the *Code of Ethics of the Canadian Professional Counsellors Association* and concluded that the Code, in his words "does not draw a wall between the two services." He dismissed the Union's allegation by concluding the Counsellor's providing both these services to the same employee did not violate any professional ethical standard as far as he could determine.

### **Issue 3**

#### **The Location of the Counsellor's Office**

The Union alleged that the Counsellor acted unprofessionally and in a manner which could have violated the employee's privacy rights by conducting his counselling sessions in the living room of his home. The Arbitrator also dismissed this claim. He observed that "Home offices are not uncommon in many professions, and the use of a home to provide professional services is not unheard of." So, in his decision he stated:

*The Union has directed the Arbitrator to no law, regulation or guideline which would prohibit a professional counsellor from utilizing his or her home to meet with or deal with clients, particularly when there is no other person present during his or her provision of counselling services and where no indiscretion or violation of the obligation of confidentiality has been demonstrated.*

It appears that the Arbitrator did not assess the inherent risk of a client encountering a family member or a neighbour of the Counsellor, but rather, was satisfied with the Union's inability to demonstrate that such an encounter had occurred.

### **Issue 4**

#### **Alleged Breaches of Confidentiality**

The Union mentioned that the Counsellor breached the right to confidentiality by disclosing to an employee's employer, HEA, that he had a lung cancer diagnosis. Both the HEA and the Counsellor argued that this disclosure was made since it could increase the risk of a relapse from the drug recovery program. The Arbitrator states that the Counsellor did not provide any psychological or medical support for this position. He concluded that the Counsellor's disclosure was a "*blatant violation of confidentiality*"....*could foreseeably undermine the trust that is essential to the viability of the counselling process itself.*"

### **Issue 5**

#### **Alleged Breaches of the Employee's Right to Privacy and Confidentiality**

It was alleged by the Union, and confirmed in the Arbitrator's Report, that some of the counselling sessions with the Counsellor took place in public places including at: Tim Hortons, Home Depot, the Waterfront and during the Counsellor's grocery shopping. One employee said the following about his experience of being with the Counsellor in a public place:

*When we were out together, I always felt uncomfortable, especially at Tim Hortons. One of the Tim Hortons we went to was one that my father goes to. I was always terrified of running into people I know. A couple of times we did, and I didn't know how to introduce Counsellor J. Again, there was no confidentiality.*

After his review of these actions by the Counsellor, the Arbitrator reached the following conclusion:

*In the circumstances, the Arbitrator is compelled to conclude that by conducting counselling in public places Counsellor J departed from the requirements of paragraph 8 of the Code of Ethics which mandates a safe and private setting for counselling, along with the expectation of privacy found in Personal Information Protection and Electronic Documents Act (PIPEDA), which I am also satisfied is implicit in any employment relationship and in the collective agreement.*

## **Issue 6**

### **Alleged Unprofessional Communications with Employer**

A number of employees reported concern about how the Counsellor spoke to them about private matters during some sessions with him. One said that he was asked how often he had marital sex, and another was asked if he had sex with his common law spouse. The Arbitrator did agree that these alleged statements constituted to a lack of professionalism on the part of the Counsellor, however, he concluded that he did not see it as an issue of privacy and confidentiality which was the grievance being considered in this instance. On the other hand, a circumstance in which the Counsellor spoke on the telephone to an employee about private matters when another employee was present with the Counsellor was seen by the Arbitrator as a confidentiality violation. *He said "that it was plainly unprofessional on the part of the Counsellor. In my view it also deeply offended the rights of the employee who would have every reason to doubt his ability to communicate at any time thereafter in confidence with the Counsellor."*

In the conclusion to his Report, the Arbitrator summarized his decisions on the various grievances, and addressed the issue of a remedy for those for which the Counsellor was found liable for professional misconduct. He considered the Union's request for remedies and the **HEA** response. He stated that as an Arbitrator he could only award compensatory remedies, not punitive ones. There were 4 HEA employees who were participants in this case, and in his view, each were affected differently by the Counsellor's behavior. He directed their employer, **HEA**, to make the following financial compensatory awards to three of them: \$5000.00, \$2500.00 and \$1500.00 respectively and he provided his rationale for these different awards. He also directed the HEA to work with the EAP company by which Counsellor was employed, to review all the reports submitted by the Counsellor for each employee with whom he worked, and to purge any inappropriate personal information from their personnel files. He observed that the Counsellor was no longer retained by HEA so there was no need for him to address this matter further, but if it had been necessary he would have so directed.

I invite readers to reflect on the allegations made in this Arbitration Case and, based on the limited information available in this Notebook, to engage in a collegial discussion regarding the decisions made about them.

This case can be found at [www.Canlii.org](http://www.Canlii.org), 2015, 39432 (ON.LA)