

NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS OF PRACTICE FOR COUNSELLORS AND PSYCHOTHERAPISTS

Protecting Privacy and Confidentiality in the COVID-19 Virtual World: Some Advice for Health Practitioners from Information and Privacy Commissioners and Others

Dr. Glenn Sheppard

All of us in Canada like citizens in all nations are challenged by the COVID-19 pandemic. Some have lost loved ones to the disease and we have all had to make changes to our daily lives to protect ourselves and others. Health care professionals, including counsellors and psychotherapists, have also made changes to their professional lives and practices in order to safely provide their services during the pandemic. The most significant change for health practitioners is the delivery of their services at a physical distance from their clients, typically from their home, using one of the available technological platforms for doing so. This has led to a tremendous expansion in the provision of telehealth services by professionals so that they can have a virtual presence for the recipients of their services. It has also required many to upgrade their knowledge of these technologies and the skills to use them effectively while paying particular attention to maintaining ethical standards while doing so.

Fortunately, there has been an increase in the opportunities to acquire the competencies to use the electronic platforms appropriately as a means of providing high quality services. For example, the American Psychological Association made a significant contribution by developing a document which reports on the results of a review by experts of three of the better-known telehealth platforms. These include Doxy.me, thera-LINK, and Zoom. They were compared according to: available features, ease of use, functionality, user support, and value for money. The review also evaluated how each platform provides for privacy and security. This report is entitled *Comparing the Latest Telehealth Solutions*¹.

This last feature of the review is critical to the provision of telehealth services. However, they are delivered, professional users, such as members of the Canadian Counselling and Psychotherapy Association (CCPA), must do so in a manner compatible with their Codes of Ethics and Standards of Practice. CCPA members can get help with this obligation by adhering to the standards of practice outlined in the CCPA document entitled *Guidelines for the Use of Technology in Counselling and Psychotherapy*².

In addition to this important assistance some information and privacy commissioners have offered their advice as to how health care practitioners can address privacy and security concerns during the COVID-19 pandemic. For example, the Commissioner for Ontario has provided the following guidance:

We understand that these are exceptional circumstances and it may not be possible for service providers to meet the same standards for security and privacy protection that they normally do. Many organizations are striving to manage service disruptions and continue to provide essential services, especially in the health and child and family services sectors.

If your organization believes that staff (or agents working on the behalf of the organization) should be allowed to handle personal information from home, in order to provide necessary services in an effective and efficient way, you should permit them to do so. You should guide any staff working from home on how to do their work within as privacy-protective an environment as they can, given the realities of our current situation.

In a public health crisis, it is also understandable that service professionals, especially in the health and child protection sectors, may need to send or receive information by phone, text, email or other messaging services. The above applies to the use of technologies not normally used for business, during this crisis.

We remain available to public organizations for consultation and discussion on access and privacy matters during this time.

The Commissioners has also provided the following tips for dealing with personal information when working from home:

Mobile devices:

- *Password protect your device*
- *Lock your device when not in use*
- *If using portable storage devices, such as USBs and portable hard drives, if possible, ensure they are encrypted and password protected*
- *Keep your software up-to-date*

Emails:

- *If possible, use work email accounts rather than personal ones for work-related emails involving personal data*
- *Before sending an email, check that you're sending it to the correct recipient, particularly for emails involving personal data (see my Notebook – **Email Communication with Clients, in COGNICA Summer 2019***

Paper copies and files:

- *Only remove personal information from the office if it is necessary to carry out your job duties*
- *Securely store any paper files when not in use – lock files away and do not leave files in your car*

Counsellors and psychotherapists working in private practice in Canada are covered under the authority of the *Personal Information Protection and Electronic Documents Act (PIPEPA)*.

If there are any departures from the usual privacy and confidentiality protocols during the COVID-19 period, the Privacy Commissioner of Canada emphasized adherence to the principles of necessity and proportionality as follows:

All organizations must continue to operate with lawful authority and exercise good judgement. Government institutions will need to apply the principles of necessity and proportionality, whether in applying existing measures or in deciding on new actions to address the current crisis.

The regulator for registered nurses in Alberta appears to recognize that during the pandemic exceptional circumstances may require accepting less than the usual privacy safeguards according to this advice:

CARNA supports the use of virtual care platforms that are recommended and supported by the employer. We recognize that in highly challenging circumstances an NP may need to depart from established procedures in order to care for clients and people using health-care services. It is reasonable that if the employer is supporting temporary use of unregulated communication technologies based on the principle of matching intervention to need, then CARNA would also support this use as the Practice Standards for Regulated Members state that the RN and NP follow policies relevant to their practice setting.

Additionally, the Law Society of Ontario also makes an important concession because of the reality of COVID-19. It applies to the requirement for commissioning affidavits and is as follows:

- *The Law Society will interpret the requirement in Section 9 of the Commissioners for Taking Affidavits Act that "every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public" as not requiring the lawyer or paralegal to be in the physical presence of the client.*
- *Rather, alternative means of commissioning such as commissioning via video conference will be permitted.*
- *If lawyers and paralegals choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.*

Of course, counsellors, psychotherapists, and other health practitioners may have to make similar decisions when they have no physical presence with their clients.

In conclusion, it is evident that some privacy commissioners and professional regulators are prepared to accept limited departures from the usual privacy and confidentiality protocols in recognition of the unusual practice circumstances created by the pandemic. However, it is equally clear that all health practitioners must make every effort to ensure that any such changes are as limited as possible and that they adhere to the principles of 'necessity and proportionality'

So, it is a time to be vigilant in order to minimize the threats to the maintenance of privacy and confidentiality as professionals provided their services in a different way and for many, by an unfamiliar means, in the virtual world where many now work.

It is also important to recognize and acknowledge the resiliency and adaptability of health professionals as so many of them continue to upgrade their knowledge and skills in order to sustain the provision of their health care services in these challenging COVID-19 times.

References:

- 1 apaservices.org/practice/business/technology-column/telehealth-solutions
- 2 ccpa-accp.ca/chapters/technology