The BULLETIN
THE • ONTARIO • BOARD • OF • EXAMINERS • IN • PSYCHOLOGY

# THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Recognizing that many of our registrants are engaged in employment and practices affected by this Act, the Board asked Dr. Bruce Quarrington to examine its implications for psychologists. His report to the Board is published here in an abridged form. The interpretations and opinions offered should not be construed as those of the Board. In considering the issues involved in compliance with the Act, the Board welcomes comment from readers of the Bulletin.

## BACKGROUND

The Ontario Freedom of Information and Protection of Privacy Act was introduced in January 1988 and applies to provincial ministries and any agencies, boards, commissions and corporations designated under the Act's regulations. Since then, additional institutions have been designated such as OISE, Community Colleges and District Health Councils. In January 1991 the Act will also apply to municipal and regional governments, and will include school boards and schools.

The Act serves several purposes. With certain exemptions or restrictions, it offers members of the public access to the documents employed in the operations of the governmental bodies indicated. An important restriction pertains to personal information held by these bodies which can only be released to the identified person, and to persons formally designated by that person. Apart from institutional employees whose work requires access to particular personal information, other individuals are permitted ordinarily only information that will not invade the personal privacy of the person. Such restrictions are one aspect of privacy protection. Another aspect is that of the right of the identified individual to request correction of his/her personal information where there is believed to be an error or omission. If this request is denied, then the individual may require that a statement of disagreement be placed in file. A third aspect of privacy protection is found in those sections of the Act that seek to control how institutions collect and maintain personal information within the institution, even in the absence of a request for access. An important principle here is that the person about whom information is collected should know that information is being collected, what the purposes of the collection are, on what authority it is being collected, and what limits of confidentiality and preservation will be observed.

The present discussion deals primarily with requests for personal information, for it is this sort of request that most frequently impinges on the practice of psychologists in the service of the agencies and institutions affected, and which has given rise to some concerns. These have prompted some psychologists working in school systems, and others who are now, or who will be, affected by implementation of the Act, to anticipate the need to revise some of their work habits to avoid similar difficulties.

The Act is quite specific in many respects, but it is also ambiguous or silent in some matters and, accordingly, the correct interpretation of some parts of the Act will only be known when the Commissioner appointed to deal with appeals by persons seeking information who are refused full disclosure of the documents requested, has made a ruling. Such rulings are published periodically by the Office of the Information and Privacy Commissioner/Ontario in the bulletin Summaries of Appeals. To some extent then, the discussion here must be speculative at points, although, where possible, current practices of heads of institutions and their representatives, and rulings of the Commissioner that are relevant will be set out.

The Act makes the head of an institution responsible for responding to requests for information. For government ministries, the head is the minister of the Crown or those employees to whom he delegates this authority. For each ministry and for some related agencies or Boards, an individual has been designated as the Freedom of Information and Protection of Privacy Act coordinator (FIPP coordinator), although their titles and functions vary. In some ministries, the FIPP coordinator is charged with the responsibility of collecting the personal information requested, deciding if something less than full disclosure is warranted, and citing the section of the Act justifying the withholding of personal information. In other ministries, particularly those with many personal information data banks, other employees are made responsible for the assembly of the personal information requested and the decision-making as to disclosure, while the coordinator acts as an administrator, executive assistant, and technical advisor. The specific mechanics and terminology employed to operate the Act differ somewhat from ministry to ministry. As the act is extended in its application to municipal governments, school boards, etc., new determinations will be required to assign headships and to make the other arrangements required for implementation. For example, at the time of writing it has not been decided who will be recognized as 'head' of a school board: the Chair of the Board of Trustees, the Board as a whole, or the Superintendent of Education; nor has it been decided if there is to be uniformity in this respect across the province.

For purposes of ease in discussion, it will be assumed that the head of the institution has delegated the responsibility of the assembly of personal information requested and decisions as to disclosure to one person who will be referred to here as the FIPP coordinator.

Many requests for personal information come from employees of the government who wish to learn about their personal records relating to job competitions, promotions, etc. A second large group seeking personal information consists of those receiving the services of government institutions or agencies such as rehabilitation services operated by the Ministry of Community and Social Services, the Workers' Compensation Board, or those who are, or have been, inmates of provincial penal institutions including those supervised by the Ontario Board of Parole, etc. It is requests of this sort, those of the clients of psychologists, for access to the personal information recorded about them, that have given some psychologists concern. The Act does not apply to the clinical records a patient, out-patient, or former patient of a designated psychiatric facility where provisions for access are set out in the Mental Health Act.

## REQUESTS FOR PERSONAL INFORMATION

Requesters of personal information must submit their requests in writing (there is a standard form which may be completed), specifying the sort of information requested, identifying the personal information bank and the preferred mode of access (i.e. examination or received copy). This is submitted to the ministry involved where it then becomes the task of the head of the relevant institution, in fact the FIPP coordinator, to see that a response to the request is given within thirty calendar days. Psychologists who have produced reports or other materials which are included in the documents requested by a seeker of personal information, may or may not be made aware that their material has been requested, and may or may not be asked for their opinion as to the advisability of release to the requester. There exists considerable variation in the way



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that the various ministries and agencies process requests for personal information. The Act does not require that the producers of clinical documents be advised or consulted about requests for this material. Accordingly, psychologists who are concerned about clients' access to personal information should learn the procedures employed in processing requests for personal information in their institution and seek informal or formal assurance from the FIPP coordinator, or FIPP representative responding to requests, that they will be advised and consulted when their documents may be included in a request. In those instances where a psychologist is aware that clinical records including their reports have been requested, and there is concern that the release of some of this material is likely to have adverse effects on the requester of personal information, then the psychologist may request the FIPP coordinator to withhold specific reports or parts of reports. In general, FIPP coordinators receiving such requests are likely to comply if there are strong arguments offered against disclosure and these grounds are in accord with one or more specific provisions of the Act that permit a head to withhold a document in whole or part. It is probably fair to say that most workers in the helping professions are inclined to believe that clients will be more adversely affected by full disclosure of their personal records than do FIPP coordinators. Psychologists who believe that they know well those requesting personal information, and believe that disclosure of some parts of the record could threaten mental health, should seek to make this known to the FIPP coordinator, but they should guard against a general over-protective attitude that would weaken the perceived strength of their position.

If an FIPP coordinator judges that something less than full disclosure of the records requested is in order and justified by the Act, then access to the uncontested documents together with a notification of withheld information, and the sections of the Act upon which this refusal of disclosure is based must be offered the requester. At this point the requester may accept the access offered or appeal to the Commissioner for the full disclosure as originally requested.

Psychologists are affected by the Act largely in terms of requests for personal information included in the main personal information bank of the institution which will include their reports and other documents that they may have produced in respect to the requester. Except under certain restrictions, some of which will be discussed, individuals have a right of access to all documents or records of personal information in the possession and control of the servicing institution.

"Personal Information" is defined in Section 2 of the Act as "recorded information about an identified individual, including,

(a) information relating to race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;"

Reports of psychological assessments or diagnostic appraisals constitute personal information under subsections (b) and (g) above, while transcripts or notes of interviews and written and verbal responses to many psychological tests qualify as personal information under subsection (e). It is unclear whether the graphic or oral responses to some projective or cognitive tests represent personal information as defined above, although the spirit of the Act suggests that anything relating to a client that is used in servicing the client and that is recorded in some way, should be considered as personal information. Certainly, the term "record" is defined extensively in the Act to include essentially everything possessed by an institution that could be retrieved using the name of the person or a personal identifying code. This means that, in addition to a main institutional treatment or case file which would include reports, correspondence, memoranda, etc., other materials such as professional working files, collections of audiotapes, videotapes, machine readable records, computer based records, drawings and all other documentary material would also be considered a "personal information bank" if so organized that the name of a person, or some associated code number or symbol permitted retrieval of material related to that person.

### *HARMFUL CONSEQUENCES OF ACCESS*

Some psychologists have been concerned that some persons seeking access to their personal information will receive a psychological report and be confused, or will misinterpret this to their disadvantage due to the technical language employed. In one instance a person requested her probation case file. The ministry delivered most of the file, but at the behest of the psychologist, required the person to meet with the psychologist who would explain the psychological report. At the time, this appeared to be a reasonable condition since the Act states that the head of an institution "shall ensure that the personal information is provided in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used." (subsection 48(4)), and the psychologist believed that the language of the report could result in serious misapprehension. The applicant refused this condition and appealed to the Commissioner that she was being effectively denied access. Following an inquiry, the Commissioner ordered release of the psychological report ruling that "subsection 48(4) does not create a further duty on the head to assess a specific requester's ability to comprehend a particular record." (Order No. 19, Summaries of Appeals, December, 1988). It seems clear that the release of a document or record cannot be conditioned by a requirement that the requester attend an explanatory meeting. Such a meeting might be judged useful to the person and therefore offered, but cannot be made a condition of release. Perhaps, in some instances, an explanatory note might be thought useful in avoiding such misunderstanding and could be added to the file and in this way made available to the person requesting the personal information.

The Act does permit the head of an institution to withhold personal information "that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual." (49(d)). The Commissioner in the foregoing ruling judged that the psychological report was "medical information" under this section of the Act, but pointed out that the head had not invoked this section of the Act to withhold the psychological report. This ruling indicates that, where there is strong reason to believe that disclosure of a psychological report will threaten mental health, the Act will permit withholding the psychological report or permit excision of parts of the report. There may be in the Act, implicit restraints on the extent to which severing of reports would be permitted. Subsection 48(4), referred to earlier, makes comprehensibility a requirement in the disclosure of personal information. Usually, reference here is to personal information that is in a coded form of some sort, and this subsection requires that there be some

translation to a comprehensible form. However, it is also possible that this section will be interpreted to restrain extensive excision of components of a report or other personal information document so that it could not be comprehended by anyone.

### IDENTIFICATION OF SOURCES OF RECOMMENDATIONS

In the treatment or servicing of institutional or agency clients, decisions must be made with respect to case management that do not always work to the benefit of the client. Or clients make requests that must be denied which will be resented by the client. Where there is only one case manager, clients are usually aware who is the agent of their discomfort and the professional must accept and attempt to deal with client hostility. Sometimes, a source of a resented decision or action is less evident, but may be indicated in the written report of a psychologist or other professional. Frequently too, decisions as to course of action are shared, and clients are not always aware of which members of a treatment or management team advocated the action or decision which resulted in their discomfort and anger. While it seems clear that the grounds upon which such decisions are made, or courses of action taken, should be part of the written record to which clients have access, it is debateable whether they should have access to the written recommendations that are sometimes employed in the making or in the recording of group decisions which identify the positions of each participant. If the team participants were all acting responsibly in what they individually believed to be the best interests of the client, then such identification is likely to work against a successful treatment alliance of the client and some of the identified team members should there be a continuing relationship with the agency. If the requester of such information is no longer a client of the institution, then identifying the roles of particular team members in unfavourable decisions, permits the client to focus his/her hostilities on these individuals. In rare instances such disclosure could mean exposing some to harm or other serious retributive acts by a resentful client. Subsection 13 (1) permits a head to "refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution." This means that the head may use discretion in revealing or withholding written records of the sort being considered. The Act does not provide guidance to the head in making such decisions so that psychologists involved in such a situation must present their case for refusal of disclosure based on the particular circumstances of the case. In extreme cases, where there is reason to fear retributive acts against some staff members as the result of disclosure, then Section 20 which permits a head to refuse to disclose a record "where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual."

The argument can be made that in instances where the decision made, or action taken, was based on a written recommendation that was professionally incompetent or was an example of professional misconduct, then it would be possible for a head to withhold the identification of the culpable parties. This would then block the injured client from further action such as lodging a complaint with the statutory body of the offending professionals. Some safeguard lies within the Act which requires that the requester be advised that full disclosure has not been made and the grounds upon which this has been justified. It is possible then, that the requester could understand the general nature of what has been withheld and appeal to the Commissioner for the full release of the information required.

### 'WORKING FILES'

Another sort of concern is that of access to what professional workers sometimes refer to as their personal or confidential files on their institutional clients and what will here be referred to as 'working files.' An individual working file may contain completed test forms, test protocols, rough notes of hypotheses entertained, calculations used in test analyses, transcripts of interviews with clients or informants, as well as early drafts and copies of reports, memoranda and letters some of which have been lodged in the main case file or other file systems. While most of this material may be of use to a psychologist at some future date, it could be very confusing, misleading, and perhaps harmful, to the person requesting personal information if a copy of this file was received.

In most institutions working files of psychologists are generally known to exist and are treated as confidential. In other institutions access to these files has been a contentious issue, with some non-psychologists claiming rights of possession and/or access to psychology working files. Understandably, the practices of psychologists with respect to working files has varied from setting to setting. Where access has been secure working files are likely to contain a great deal of material, useful and otherwise. Where access has not been secure, the files may be stripped of everything except copies of reports and correspondence. Neither extreme is desirable. With the advent of the Act, new forces will be brought to bear on working files that appear to have considerable potential for improvements in file maintenance, security of access and on the quality of report production. This seems probable despite the likelihood that clients will have access to the contents of working files.

### THE STATUS OF WORKING FILES

Not all psychologists have a sanguine view of the effects of the Act and question whether, in fact, clients will have access to working files. It may be pointed out, that to date, the existence of working files has received little or no official recognition. Section 44 of the Act requires that the head of institutions "shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual." In addition, Section 45 requires that the responsible minister shall publish annually:

> an index of all personal information banks setting forth, in respect of each personal information bank,
> (a) its name and location;
> (b) the legal authority for its establishment;
> (c) the types of personal information maintained in it;
> (d) the principal uses of the personal information and the typical categories of users to whom disclosures from the system are made;
> (e) any other uses and purposes for which personal information in the personal information bank is used or disclosed on a regular basis;
> (f) the categories of individuals for whom records are maintained in the system;
> (g) the policies and practices applicable to the system with respect to storage, retrievability, access controls, retention and disposal of personal information maintained; and
> (h) the title, business address and business telephone number of the official responsible for the operation of the personal information bank.

The first published Directory of Personal Information Data Banks (Toronto: Queens Printer, 1988) consists of 304 pages listing the personal data banks held by the various ministries includes only one reference to a personal data bank that would be considered a working file. This is an important exception that will be discussed shortly. In most ministries employing psychologists, psychological reports are mentioned as part of the contents of the main treatment or case file, but there is no explicit reference to psychological data or working files. Most FIPP coordinators are probably aware that psychological working files exist and consider them part of the main treatment or case files listed in the Directory although housed separately. The Directory, which attempts to be an exhaustive listing of personal data banks, would not have provided the requester any guidance as to the existence of a separate psychological working file. On the other hand, if a client suspected that there was

such a file and wished to have access, a persistent client would be able to access this file. The head of an institution is obliged by the Act to assist the person in seeking out information. According to Section 24 of the Act:

> (1) A person seeking access to a record shall make a request therefore in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon reasonable effort, to identify the record.
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Assistance must also be provided when the document sought is lodged in another institution than the one from which the record has been requested. (Section 25).

It seems clear that all personal record systems may be accessed by a requester even though they are not described or identified as a distinct personal data bank in the Directory.

A second line of argument questioning client access to working files pertains to working files that are not in the physical possession of an institution. Psychologists who work with the clients of a public institution on a part-time or fee-for-service basis may, in some instances, maintain working files of institutional clients in their private offices. The question is whether in such cases the institution has a legal right of possession and control of these records, for if it does then it is evident that a requester of information also has a right of access to their personal records. This question has not yet been tested. It is possible that the nature of the job contract would offer the basis for a legal answer. However, it is unlikely that present job contracts do, or those that will be written in the future by public institutions will award possession and control of working files to the contractually involved professional. It is also possible that even in the case of a psychologist having contractually based possession and control of working files, that an appeal to the Commissioner might result in a ruling, or a court action, that returned control and possession to the institution. The spirit of the Act is that in their dealings with public institutions, the identified individual is, at least, a joint owner of personal information and ethically should have access to this information regardless of where it is housed. It would appear most appropriate to assume that individuals will, if they wish, have access to their personal information contained in working files.

If working files can be accessed, whether or not they are officially listed in the Directory, is there any advantage in seeking official recognition and listing? The precedent mentioned earlier suggests an answer. In the personal data banks maintained by the Ministry of Community and Social Services (MCSS) the Case Files of the Vocational Rehabilitation Services is listed with psychological reports being included in the types of information maintained. The categories of users indicated include VRS coordinator and staff, area managers, and Health and Welfare Canada cost-sharing program staff. Additionally the personal data bank, Client-Psychological Assessments of VRS is listed with contents including the Wechsler Adult Intelligence Scale and its test scores. Under Category of Users only "Registered psychologists employed by the ministry and VRS counsellors" are shown. There is little doubt that these are working files being described whose contents may include additional test data, but routinely include the Wechsler protocols. These files have institutional access restricted to psychologists and to those acknowledged as having a need to know the contents of these files. The clear advantage then, appears to be the security of access attained for these working files. A second advantage that may also be mentioned is that if a requester is seeking to access the working file data bank, then of necessity, psychologists will have to be informed of this request and become party to any decisions that are to be made with respect to disclosure.

With this assumption, to what extent may the Act aid in dealing with some specific concerns entertained with regard to client access to personal information in working files? To what extent will these concerns have to be managed by revised work habits?

### *INFORMATION SUPPLIED IN CONFIDENCE*

One sort of document that is more likely to be in a working file rather than a main case file is a transcript or notes of an interview with an informant containing information about a client. The definition of personal information in the Act includes the recorded opinions of others about the individual. The requester of personal information then, has a right to access not only recorded professional opinion, but also recorded opinions of informants who were interviewed as part of the assessment and treatment of the client. This can present some concerns, however, particularly when the interview was given in confidence. The release of these documents would appear to violate the privacy of the informant, and in particular circumstances, might introduce serious difficulties in the relationship of the client requesting personal information and the informant. Unless transcripts of informant interviews are clearly marked as confidential they may not receive any special attention from a FIPP coordinator when a working file has been requested. Where the requester is seeking personal information from institutions under the jurisdiction of the Ministry of Correctional Services, subsection 49 (e) permits the head to refuse to disclose information supplied in confidence. In those cases where law enforcement is not involved, the right to withhold information supplied by informants involves more complex judgments. Subsection 49(b) permits a head to refuse disclosure "where the disclosure would constitute an unjustified invasion of another individual's privacy;" Subsection 21 (2) states that a head in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all relevant circumstances, and then sets out in Subsections 21 (2) (a) through (i) and 21 (3) (a) through (h) a number of specific conditions which would represent unjustified invasion of privacy. These are the same conditions that would be applied to a request for personal information about a third party and, as mentioned earlier, these are extremely protective of personal privacy.

Section 20 also permits a head "to refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual." Psychologists who have obtained and filed some record of interviews with informants speaking in confidence should consider the possible harm to both informant and the requester of disclosure and, where there is clear reason for concern, bring this to the attention of the FIPP coordinator.

It is worth noting that it appears to be the practice of some FIPP coordinators to attempt to contact informants who gave an interview in confidence, where possible, to determine if they still wish confidentiality to be preserved and to release such material if there is no present desire for confidentiality. This is comparable to disclosure with formal consent of the identified individual. While in most instances the agreement of an informant to release this material is beneficial to the requester, in some particular instances the informant's agreement to release a transcript which, for example, might contain material critical of the requester, might be a punitive act with damaging consequences to the requester. It is still possible for the psychologist to point out potential harm if there is disclosure to the requester, which will leave the FIPP coordinator with a difficult decision. Perhaps, here is an example where the optimal action would have

been to recognize, at the time of acquiring the views of an informant, the hostile attitudes towards the client and to avoid making use of this material as part of the written record of the case, on the grounds of questionable validity. A note probably should appear in the written record that an interview with the informant in question was held, but that no use was made of the material from this interview.

### PSYCHOLOGICAL TEST FORMS WITH RESTRICTED DISTRIBUTION AGREEMENTS

Some published tests contain recording forms that include questions and scoring information that one agrees not to release to the public domain when purchased. Will this obligation to maintain the security of some psychological test forms be broached by forced disclosure to a requester for all personal information? No, the permission to withhold such information is given in subsection 17(1) of the Act.

> "A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;"

### THE RETENTION OF TEST PROTOCOLS AND OTHER MATERIALS

The idea of clients acquiring access to test protocols bothers some psychologists for a variety of reasons that might be collectively referred to as 'misuse'. Intelligence test scores and some other sorts of scores are not used in psychological reports since their correct interpretation calls for expertise that takes a number of factors into account. Such information, which is in the working files, can be viewed as a serious source of misinterpretation by clients or by others with whom this information is shared. Armed with various sorts of test information from working files, may not the parents of children seek out other professionals to offer different interpretations that will challenge decisions regarding school placement of their child? Armed with test protocols and other records of test performance will not some clients attempt to 'improve' their subsequent performance and thus distort or defeat the purposes of psychological testing? These and other misuses may be anticipated. It might be tempting to ward off some of these difficulties by destroying test protocols, scoring sheets, etc., when they have served their purpose in producing the psychological report. The Act, however, imposes new restrictions on the destruction of these and other materials. Section 40 (1) states: "Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information." The regulation mentioned here is #9 of Ontario Regulation 601/87 which states: "Personal information that has been used by an institution shall be retained by the institution for at least one year after use unless the individual to whom the information relates consents to its earlier disposal." One of two conditions must be met to permit earlier destruction of personal information. Either consent of the identified individual for the destruction of material is required, or the personal information has not been "used".

Consent is likely to be useful in some applications. It is a fairly common practice to record by audiotape test performances or interviews with the formal consent of clients. Ordinarily, this is done without the intent to preserve these recordings beyond the time required to produce analyses of test performance or process notes of the interview. Strict adherence to the Act would now require that these recordings be preserved for at least one year unless there has also been a formal agreement with the client or guardian that they will be destroyed within a specified time period.

The concept of "use" is also likely to be of some value. In the process of assessment test data of various sorts may be collected, only some of which is likely to be judged as of value and used in the final assessment. Extraneous material should be destroyed since it does not relate to professional judgments or decisions that were made and if accessed later is likely to be a source of confusion. The concept of "use" has other applications. Process notes or rough notes used in test analyses often contain speculations or hypotheses entertained briefly, but not used in the sense of being employed in attaining a substantial appreciation of clients and their problems. Such materials should not appear or be retained in the working file. To a considerable extent many of us have thought of the working files as our personal files with little thought as to how they could be used by other psychologists, let alone how they would be understood by our clients. The new work habits prompted by the Act appear to require us to maintain less cluttered and better ordered files. The dating and attribution of documents, for example, assumes a new importance. Admittedly, adherence to the Act also imposes new difficulties, but for the most part the discipline required is likely to be of benefit to both client and professional.

### THE PROTECTION OF PRIVACY

Most of the foregoing has been concerned with the freedom of access to personal information held by public institutions. Equally important, however, for clients and the employees of institutions are those parts of the Act providing protection of privacy particularly within the institutional context. Subsection 38 (1) specifies that in this, and Section 39 "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act. Subsection 38 (2) then states:

> No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.
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> In the area of application of interest here, this subsection requires that the seeking of personal information by a member of an institution be limited to that which is necessary for the purposes of their authorized functions. In the case of psychologists interacting with clients for the purposes of assessment, psychological diagnosis or psychotherapy there is considerable latitude permitted by the wording of this section, but in particular relationships, where there are specific objectives, there is also a clear obligation to avoid unnecessary invasion of the privacy of the client by collecting extraneous personal information.
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> In most situations where psychologists are collecting personal information, part of the process involves making sure that the client is aware of the purposes or uses of the information obtained. In those situations where there is not such clarity, and it does not involve law enforcement, subsection 39 (2) obliges the head of an institution (unless notice is waived by the responsible minister), to inform the individual to whom the information relates of,
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> (a) the legal authority for the collection;
> (b) the principal purpose or purposes for which the personal information is intended to be used; and
> (c) the title, business address and business telephone of a public official who can answer the individual's questions about the collection.
>
> The intent here is to assure that the individual is sufficiently informed as to these matters that a personal decision may be made by weighing the advantages of compliance against the costs of personal disclosure. The Act goes further in its attempts to regulate the use of personal information once collected. Section 41 restricts the uses of personal information to those purposes, or consistent purposes, and involving that information to which the individual has given consent. Section 42 deals with exceptions or conditions which permit

disclosure of personal information and reiterates earlier conditions for disclosure of personal information such as knowledge of the information and consent, and adds a number of additional exceptions including:
(d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;

It seems clear that the intent here is to control the access to, and dissemination of, personal information within an institution to that information which employees require to carry out their authorized functions. This would appear to bear importantly on a matter that has troubled psychologists in some institutions for some time, which is the prevention of working files, which contain confidential content and material of a technical nature, being accessed without permission by various members of the institution. In some school boards, for example, the administration has insisted on the rights of educational officers to have access to and control of the working files of psychologists. The hazards here are obvious. Professional obligations to observe the confidentiality of clients are threatened or violated. Material requiring psychological expertise in its interpretation and its use, may be misappropriated, misinterpreted and misused to the disadvantage of clients. The present Act appears to offer a basis for clarifying what constitutes appropriate access to the working files of psychologists. Psychologists who are in institutional employ are obliged to provide to others working with their clients, accounts of their client's development, psychological status or diagnosis, and to answer, within their abilities, those questions arising from their colleagues' authorized activities. These can be dealt with by verbal reports and by written reports or memoranda which should become part of the main personal data bank of the institution, but there is no reason why access to the working files of psychologists should not be restricted to employed psychologists, and to those that psychologists have valid reason to permit access.

If this reasoning is sound, then psychologists employed by institutions affected by the Act who maintain working files might be advised to seek official recognition of their files as a personal information bank whose description, as called for in subsection 45 (d) and described much earlier, would specify that the categories of users included only psychologists and their designated assistants. While it would be desirable that such an arrangement could be first obtained at a province-wide level, it is likely that this and other matters pertaining to school boards and municipal agencies will be decided locally. Psychologists concerned with these issues should make their position known to the local officials and employees who are planning for the implementation of the Freedom of Information and Privacy Act at the municipal and regional government level. ■

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## NEW PERMANENT REGISTRANTS

The following candidates for registration in Ontario were admitted to the Permanent Register at a meeting of the Board held on December 2, 1988.

Deborah Baar
Peter Barrett
Susan J. Berry
Edward K. Brownlee
Susan L. Bryant
Stephen M. Butler
William G. Crealock
Anne L. Cummings
Brian D. Doan
Ramona J. Domander
Anthony J. Donohoe
Petra Duschner
David K. Faux
Mark B. Ferland
Michelle P. Flax
Robert D. Gates
Donaleen C. Hawes
Eugene W. Hewchuk
Marilyn E. Hochster
Margaret A. Kirk
Anton F. Klarich III
Peggy J. Kleinplatz
Beverly-Mae Knight
Maria Kokai Czapar
Debra S. Lean
Susan P. Lollis
Brenda L. McLister
Sarah E. Maddocks
Marleyne Mauri
Wayne M. Meadows
Michael M. Minden
Janet L. Munson
Nitza B. Perlman
John B. Phillips
Jill M. Pickett
Anand N. Prabhu
Donald S. Rayko
Donald E. Read
Justin G. Reid
Yolande E. Roy-Cyr
Howard M. Schachter
Philip B. Smith
Dana B. Smyth
Karen E. Solomon
Cheryl D. Thomas
Anthony Toneatto
Dvora D. Trachtenberg
Charles Vetere
Romeo L. Vitelli
Johnny N. Yap
Raymond J. Yokubynas
Victoria Nelson

## A THOUGHT FOR PSYCHOLOGISTS

The following statement, provided by an Ontario psychologist, suggests that psychologists and employing health-care institutions would do well to extend to their colleagues or employees the same sensitivity and understanding they are expected to display in their service to their physically disabled clients:

Recently, I was the Primary Supervisor for a candidate for registration. Regrettably her employment was on a time-limited contract. Her clinical and social skills were exemplary. Nevertheless, despite the highest recommendations, she has found obtaining suitable employment difficult.

This exceptional candidate is physically challenged. The last thing she wants or expects is sympathy; she just wants an opportunity to perform the clinical work she has studied and trained for over many years.

I have long been disabused of the notion that psychological practitioners are innately or through their training invariably good communicators or interpersonally skilled. Nonetheless, it is with consternation that I observe that, at a time when many segments of our society are recognizing the vocational worth of the physically challenged, some members of my profession continue to be insensitive to this issue. ■

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