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THE PRACTICE OF SCHOOL PSYCHOLOGISTS (PART 2)

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INTRODUCTION

The first part of this article, published in May 2003, dealt with a number of topics, including what characterizes the practice of school psychologists; the need to take different legislation into account; the need to adjust certain ethical and regulatory requirements to the constraints of different workplaces; and the psychologist's responsibilities toward clients and the employer in a setting where other workers may not understand the reasons for the requirements applying to our profession.

In our continuing effort to provide information on the issues submitted to the Syndic's Office, we will expand on some of these topics. We will provide directions to guide psychologists working in the school setting and facilitate their day-to-day decision making. To illustrate the points made, we will end with a few situational scenarios.

These guidelines do not constitute legal opinions; each case is particular and must be analyzed in the light of the circumstances peculiar to it.

SOME CLARIFICATIONS

1. Professional Secrecy

Of the ethical requirements applying to the work of psychologists, a particularly important one is that concerning professional secrecy. Although the members of all professional orders in Quebec are subject to this obligation (*Quebec Charter of Human Rights and Freedoms*, sec. 9, *Act respecting access to documents held by public bodies and the protection of personal information public*, sec. 53, *Professional Code*, sec. 60.4), the requirement is particularly stringent in the case of psychologists (see *Code of Ethics*, Division VI, sec. 38 to 49).

Psychologists who are attached to a school board have a sense of common membership in the organization, but this cannot be seen as a reason to disclose, without good cause, information about the children they deal with. Psychological services are considered, in the educational system, to be part of student services, of which the role is defined as follows in the Basic School Regulation of the *Education Act* (sec. 447): "the purpose of student services is to help students to progress in their various types of learning."¹ School psychologists contribute to the "overall development of students,"² while giving due consideration to their professional obligations and the rights of the persons involved. The particular features of the environment in which they work should not constrain school psychologists, or prevent them from taking action, but rather, encourage them to use the resources at their disposal to ensure compliance with professional secrecy.

For example, when obtaining parental consent for an assessment, the psychologist should use the opportunity to identify the services to be provided and clarify the issues related to subsequent communication of the information to other members of the school team (sec. 40, *Code*

of Ethics). Depending on the nature of the work to be done with the child, the duration of the permission may be limited, as in the case of a specific assessment, or more extensive, as in the case of a child in difficulty who will require psychological services for a longer period.

Psychologists may be uncertain how to discharge their obligation of professional secrecy when dealing with a child who is transferring to a new school within the same school board, who will need to have appropriate services organized in the new location. In this case, depriving the school of available information could harm the child. The psychologist can discharge his obligation by explaining to the child's parents, either at the time of the assessment or at end of the school year, what help is required and why it is necessary to provide the information to the new institution's personnel (e.g. teachers, school principal, psychologist, etc.) (sec. 40, *Code of Ethics*), and obtaining the parents' consent, thereby allowing the psychologist in the new school to provide the necessary services with the required authorization. This example shows how a psychologist can reconcile his obligation toward professional secrecy with the school board's need for a practical outcome, while highlighting the psychologist's role as an internal resource and delivering the service needed by the school. It should also remind psychologists to provide for appropriate consent forms concerning communication of information.

2. Consent to Psychological Services

Given the high incidence of broken families, psychologists may be concerned that the need to obtain parental consent could interfere with the effective provision of their services.

It is important to note that "parental authority is a shared institution" [translation] (Deleury and Goubau, 2002, p. 128), and that generally, "The father and mother exercise parental authority together" (sec. 600, *Civil Code of Quebec*).

But, it is also true that "Where the father or the mother performs alone any act of authority concerning their child, he or she is, with regard to third persons in good faith, presumed to be acting with the consent of the other parent" (sec. 603, *Civil Code of Quebec*). Thus, the psychologist, a third person in good faith, who obtains permission from one of the parents to provide services to the child can presume the agreement of the other parent, in particular as the parents are also obliged, by sections 6 and 7 of the *Civil Code of Quebec*,³ to exercise their rights in "good faith." This means that a pragmatic approach can be taken for managing the required consents when dealing with parents who are separated or divorced.

The Ordre des psychologues, along with the other professional orders⁴ whose members work in the school setting, advocate an approach which emphasizes the interests of the child, respect for the rights of the persons involved, and concern not to impede the provision of the necessary services. This is in line with the trend in jurisprudence and the broad consensus among professionals working in the field.

Of course, insofar as possible, obtaining the consent of both parents is preferable.⁵ But in emergencies or situations where obtaining this double consent is impossible, it would be acceptable to obtain consent from only one of the separated or divorced parents, assuming he or she has not forfeited his parental authority (sec. 606, *Civil Code of Quebec*), in order to be able to begin providing services after completing the following procedure:

Question the signatory parent to ascertain the other parent's agreement regarding the services to be rendered.

If there seems to be no reason to presume the other parent's refusal, file in the record a document:

- stating that the written consent of the consulting parent has been obtained;
- stating that this signatory parent has provided all the information to the best of his or her knowledge.

Make a note in the record that the other parent's consent is presumed.

3. Psychological Record

Section 3 of the *Regulation respecting the keeping of records and consulting-rooms by psychologists* specifies what must be entered in the psychological record: the client's identifying information, service contracts, special agreements and consent; notes following professional services, including progress notes and reports or treatment summary, their date of production and the psychologist's signature for each one.

Knowing that, subject to certain conditions, parents can have access to their child's record under the *Act respecting access to documents held by public bodies and the protection of personal information*, the psychologist must be careful to avoid making comments or annotations on uninterpreted data. The progress note is the best vehicle for summarizing the work done using terms that preclude "all possibility of false interpretation or erroneous use of the information" by others (sec. 77 of the *Code of Ethics*).

It has to be remembered that only another psychologist is permitted to access a psychologist's "raw, uninterpreted data from a psychological consultation" (sec. 75, *Code of Ethics*), including test protocols used.

When communicating information to other personnel, with the parent's permission, the most appropriate method appears to be the report or treatment summary, which explains what the psychologist has done with the given student.

A PSYCHOLOGIST WORKING FOR A SCHOOL BOARD HAS TO CONSIDER THE GOAL PURSUED BY HIS ORGANIZATION.

THE REGULATORY FRAMEWORK GOVERNING HIS PROFESSION GIVES DIRECTIONS THAT ENABLE HIM TO DEFINE WORK PROCEDURES ADAPTED TO HIS ENVIRONMENT.

THE PSYCHOLOGIST'S JUDGMENT OF THE GOOD FAITH OF THE PARENT WHO SIGNS THE CONSENT FORM PERMITS HIM TO PRESUME THE OTHER PARENT'S AGREEMENT. A NOTE SHOULD BE ENTERED IN THE RECORD TO DOCUMENT THE ABSENCE OF DIFFERENCE OF OPINION BETWEEN THE PARENTS. THERE IS BROAD CONSENSUS AMONG PROFESSIONAL WORKING IN QUEBEC SCHOOLS THAT THIS IS THE BEST APPROACH TO TAKE.

4. Professional Judgment

The members of the team contributing to the preparation of these ethics guidelines⁶ have noted that the large number of applicable laws makes it difficult for psychologists to decide on the approach during an intervention. As in any decision process, it is necessary to determine the nature of the problem and identify the request being made, the client(s) and other persons concerned by the situation and the psychologist's obligations towards them, the ethical aspects involved and the applicable legislative provisions.

An initiative that can be useful is to establish, with the employer's agreement, a committee inside the school board for the discussion of ethical issues; it can serve as a source of information for practitioners and be a source of guidance for psychologists, especially those just beginning their career.

In the psychologist's work, the Quebec *Charter of Human Rights and Freedoms*, the *Civil Code of Quebec* and the *Act respecting access to documents held by public bodies and the protection of personal information* apply hierarchically, in parallel with the *Code of Ethics of Psychologists*. The psychologist does not have the option of disregarding such basic obligations as professional secrecy and the need to obtain consent. However, as this article has sought to demonstrate, psychologists can establish procedures that will permit them to comply with their professional requirements while contributing effectively to the achievement of their employer's mission, in a way that highlights the pertinence and added value of the psychologist's presence in the school setting.

SITUATIONAL SCENARIOS

Professional Secrecy

1. Two psychologists are employed by the same school board. One of them had performed an intervention in a school the previous year and the file was closed. Now the other psychologist is asked by her school principal to work with a 12-year-old student. The parents have not been informed and this is not an emergency. The principal wants to know whether anything had been done with this student in the past and if so, he wants the record to be transferred in order to discuss what should be done at present.

The psychologist can obtain the information and have the record sent so that she can see what was done before.

If the record contains an explicit consent permitting disclosure of the information, she can tell the principal the nature of the previous intervention and the findings contained in the summary or report. If not, she can call the parent who authorized the first intervention to ask whether he or she agrees to the disclosure of this information, and note in the file that this check was made.

It goes without saying that before initiating a new intervention, permission must be obtained again.

N.B. This example shows the importance of having a consent form stating the parents' agreement to give school authorities access to the report. If a later request is made by the personnel of another school the child is attending, the psychologist will have to assess the validity of the original authorization. This validity will have to be assessed in an objective way, depending on the child's situation. If the information contained in the record is not relevant or is of a nature to cause harm, given the amount of time that has elapsed, then clearly the psychologist should question the validity of this past consent, as the services to be provided are no longer the same.

2. A teacher observes that a little girl is showing behaviours suggesting possible sexual abuse. The teacher is afraid that if she reports this, it will not be taken seriously because she does not have much supporting evidence. She asks the school psychologist to evaluate the child. However, if the child is a victim of incest, the parents may not permit the evaluation. How should the psychologist proceed?

The psychologist cannot take the role of investigator, which belongs to the Director of Youth Protection. Neither can he presume the presence of abuse without having satisfied himself that there are "reasonable grounds to believe that the security or development" (Youth Protection Act, sec. 39) of this child is in danger.

However, he can act as consultant to the teacher and/or principal to ensure that the most appropriate action is taken, taking account of the child's needs, that is, he can help the teacher either with the reporting or with the request for permission for a psychological intervention.

3. A 14-year-old intellectually challenged adolescent comes to speak to the psychologist at her high school. She asks the psychologist to keep the discussion secret from her parents. The psychologist judges the student's mental age to be about eight, and feels that the information obtained from her should be communicated to her parents. She is not certain how to proceed.

The Civil Code of Quebec (sec. 14) stipulates that a youth aged 14 and over can give his own consent to his health care, including psychological services. However, in this case, the girl does not appear to be able to consent to her care. The psychologist should make the determination that, given the client's characteristics and her request, it is in her interest to inform her

parents about the problem discussed. She should explain to the client the limits to confidentiality in her own interest and the need to involve her parents. This example shows that ethical issues can arise from the difference between the legal reality of the rights recognized in the Civil Code of Quebec and the clinical reality observed by the psychologist.

Consent

4. A psychologist has evaluated a child for learning disabilities. The parents gave their consent to the evaluation and the subsequent communication of recommendations to other members of the school team. The psychologist goes on maternity leave before she is able to send the information to the school personnel. The person replacing her is not certain whether she needs to obtain the parents' permission a second time.

In this situation, it is not necessary to ask for permission again, because it has already been given. However, it would be appropriate for the replacement psychologist to inform the parents that she has taken over the case. Section 10 of the Code of Ethics tells us that "A psychologist shall establish and maintain a relationship of mutual trust with his client."

Psychological Record

5. At the end of the school year, a psychologist working in elementary schools sends the records of graduating students to the high school psychologist at the same school board. He is not certain whether this is the right thing to do.

This is an administrative matter and depends on the rules in effect at the school board. There is no need for the parents to be involved. The psychological records can be kept at the school where the services were provided or at the school the students now attend. The important points are the following: the record belongs to the school board, it must be preserved for at least 5 years in accordance with OPQ regulations; the presence of the record in the school cannot be interpreted as authorization to provide services without obtaining the required consent; other professionals cannot have access to the record content (sec. 75 and 77, Code of Ethics). If the school board takes particular measures with regard to the preservation of records, this could be specified on the consent form.

REFERENCES

1. Basic school regulation, Division II, Student Services, sec. 3
2. Basic school regulation, Division I, Preschool Education Services and Elementary and Secondary Instructional Services, sec. 2.
3. Section 6: Every person is bound to exercise his civil rights in good faith. Section 7: No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.
4. The professional orders of: guidance counsellors and psychoeducators, speech therapists and audiologists, social workers, and psychologists. Unpublished meeting report. June 12, 2003.
5. A recent decision by the Quebec Court of Appeal confirms that this is still the safest approach. *W. (D.) v. G. (A.)* QCCA 500-09-012878-021. May 29, 2003.
6. We would like to acknowledge the input provided on this subject by the following psychologists: Solange De Garie and Jean-Marie Michaud of the Association québécoise des psychologues scolaires, Gaétan Langlois, Théobald Grimard and Michel Dytotte, inspector, and Pierre Desjardins, professional development advisor.

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Regulation respecting the keeping of records and consulting-rooms by psychologists, C-26, r. 154.1.

Youth Protection Act. R.S.Q., c. P-34.1.

The practice of a profession is defined by two co-existing realities: one the one hand, a recognition of the professional's right to decide on the most appropriate course of action, with every decision having an underlying ethical dimension, and on the other, the existence of a regulatory mechanism aimed at ensuring the protection of the public. The ethics guidelines are intended to inform psychologists about the existing regulatory framework to help them in the process of making informed decisions.



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