

Confidentiality - Shhh, Don't Say Anything

By Celina Reitberger

2005

For any front line worker whether it is a NAADAP, Mental Health, Band Family Service Worker, Child Welfare Worker, Community Legal Worker, to name a few, confidentiality is a cardinal rule. If you are working in your community and you gain a reputation for talking about what you learn from your clients in the course of your employment, you will lose all credibility and people won't come to see you anymore. This means that you cannot go home and speak to your partner about what you've been told by a client – no matter how interesting you think it is. You cannot chat with your neighbour you meet on the road in a moment of thoughtlessness. You have to be ever vigilant. A front line worker may face discipline and even termination of employment depending on the damage done by the indiscretion. Mostly you are hurting your own reputation and ability to do your job. Confidentiality is the core of the worker/client relationship; without it all is lost. The Law Society of Upper Canada can discipline lawyers who breach confidentiality. Confidentiality is a professional duty.

There is new federal legislation that agencies must know about. It is called the *Personal Information Protection and Electronic Documents Act*. This act was not drafted with health care information in mind. It addresses public health issues, which may require collection and disclosure of personal information in the public interest. But, Children's Aid Societies are citing the need to adhere to this act as well so this is just another layer of bureaucratic armour that we will need to penetrate. The remarks below apply to this new act as well.

In the area of Restorative Justice and Talking Together circles we prepare participants for the circle by stressing that what is said in the circle remains in the circle. Only then will people feel free to open up and talk about their situation, how they feel and what needs to happen to make things right. The facilitator can report what agreement was reached, who attended and how the circle went but not the details of what was discussed. Participants need to be sure that they are safe in the circle. We know in our heart of hearts when we in the helping profession step over the line. [Don Miquel Ruis. in his book The Four Agreements tells us "Be impeccable with your word". Translated this simply means DO NOT GOSSIP.

Now this does not mean that we as helpers cannot talk to other front line workers about a situation when we think it is necessary to assist the client. I have experienced some situations in communities where workers are so concerned about confidentiality that they are afraid to speak to anyone, including other helpers. They become paralysed and ineffective. If you are unsure about whether you can talk to some other front line worker about a case get written permission from your client. More and more we are seeing the importance of integration of services. So, if there is going to be a team approach it is probably best to discuss it with the client in the beginning. The client is the one who is being protected by confidentiality. Try to determine from the outset what individuals you

may need to consult to properly help the client. If you need permission to talk to several people have a Form 14 entitled Consent to Disclosure, Transmittal or Examination of a Clinical Record under Subsection 35(3) of the Mental Health Act signed for each one of these individuals. (Attached) You must never get this form signed in blank.

It has been my experience that some agencies often use the need for confidentiality as a barrier. They do not want to give out information on a file. They fail to take the next step and inquire of the client if the client is willing to have this information disclosed or discuss. For example, I recently called the District Jail to inquire about the placement of someone who had been convicted of a serious crime. The woman I talked to was extremely rude and indicated she could not talk to me. It would be very difficult for me to get a Form 14, so I told her maybe she could listen to what I knew. As a result of what I said, I received a call from her superior wanting my help to deal with this individual because he was a difficult case and they wanted to get him transferred. I have frequently felt that this refusal to share information was not about the client but about the worker exercising power and control.

Many government bodies will insist upon a signed release, which can be difficult to obtain e.g. Probation, Child Welfare Agencies etc. But frequently I have suspected that the reluctance to talk without the form had more to do with an unwillingness to cooperate than to protect the client.

In one particular Child Welfare case I even went so far as to have the client on another extension give me permission to speak to the worker. That did not go over very well. The worker ended up hanging up on me. So get the client to sign the Form 14 right away to avoid delay. The confidentiality is not the property of the worker. It belongs to and is for the protection of the client. Therefore, it should be the decision of the client made with the worker about whether or not the information should be released.

Confidentiality does not have to be a roadblock to getting things done – to move forward with healing. If the sharing of information is achieved properly by fully educating the client about what it means, by sending signed consents and by continuing to respect the client's right to privacy outside the purview of the signed consents - an integration of services will follow and clients will benefit as people start to talk together in a good way.