

HOW CONFIDENTIAL IS CONFIDENTIAL?



For many members one of the biggest concerns they have when discussing a problem, which arises in their professional lives, is whether the person or persons they turn to will keep the matter private and confidential.

Will the information get out?

Talking to a lawyer is often considered the last option to which you will resort and only when your colleagues have been unable to help you. In reality, it should be the other way round for the following reasons:

- Anything that is said to the lawyer is confidential. This means that the lawyer cannot be required to disclose to anyone the information that you have shared with him/her. The relationship of solicitor/client privilege exists.
- Anything you say to colleagues has no such privilege. Despite any promise to keep your information to themselves, if the matter moves into a legal forum, they can be subpoenaed to give evidence about anything in their knowledge.

The issue of confidentiality is not a difficult one, but often people do not recognize when the information they are discussing needs to be protected by such privilege.

We offer the following suggestions to help members better understand when a lawyer should be consulted rather than a colleague. The intent is to protect both the member and their colleague from being placed in a position that may be detrimental to one or the other or both.

- Seeking input from a colleague over a problematic situation is a good idea, especially if it is something that you have not encountered before. The concept of mentoring is extremely useful. Often two heads are better than one. However, be very cautious if the discussions begin to raise concerns relating to the legality of an action or the culpability of the member. Be very careful not to divulge to a colleague any admission of fault. As a recipient of information be quick to stop your colleague from providing you with details that you might feel honour bound or legally obligated to report.
- Try to keep the conversations with colleagues as generic as possible and as non-specific as possible. This may provide

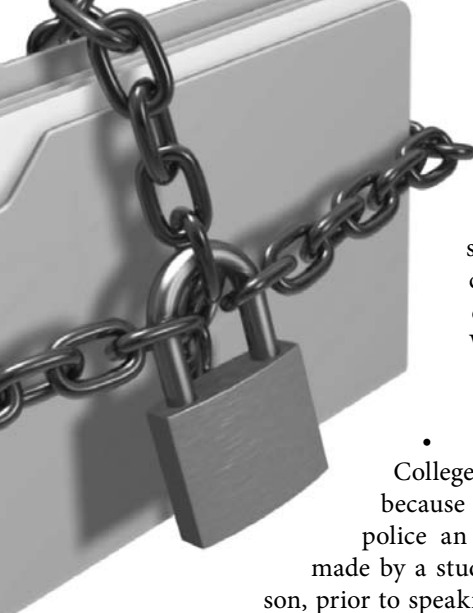
you with the reassurance you need to determine whether you face a bigger and more serious issue necessitating seeking legal advice and assistance.

- If in doubt about the seriousness of the matter, call 1-888-STERLON (783-7566). By disclosing minimal details of the issue to STERLON, they are able to determine if you require legal services or maybe the mentoring services from the Member Support Team.

STERLON acts as the plan administrator for the CPCO Legal Benefits Plan. All calls made to STERLON are treated confidentially. There is no reporting or passing of data between STERLON and CPCO that reveals the names of members using the legal services. The one exception to this is where the member requires assistance to pursue any civil harassment or defamation action (coverage for which CPCO provides from a discretionary fund). Thus, whenever a member calls the 1-888-STERLON number directly, confidentiality is maintained. If, however, a member calls CPCO first for a referral for legal assistance CPCO will become aware of a member's need for service.

Members may be concerned that their boards will know that they have used the CPCO legal service. Unless the member discloses this fact themselves, the board will not be contacted by STERLON, CPCO or legal counsel without the member's knowledge and consent. In many situations, opening a dialogue between STERLON and a board can help to resolve the matter at hand.

Members who have used the 1-888-783-7566 Telephone Legal Advisory service will attest to the peace of mind it brings. Making a call does not necessarily turn a matter into a legal issue, but at least you will know that you have sought the best possible advice and that you sought to minimize your exposure to a situation that could be damaging to your career.



Examples of Situations that May Confront Members

These may well appear to be situations that you have encountered and never thought could result in a complaint. When they do, it is stressful and worrisome.

- A complaint to the Ontario College of Teachers by parents because the principal reported to the police an allegation of sexual assault made by a student and committed by their son, prior to speaking to their son to obtain his version of the events. Complaint dismissed.
- A complaint to the Ontario College of Teachers by parents who disagreed with the sanctions placed by the principal on male students accused of sexual assault. Complaint dismissed.
- A complaint to the Ontario College of Teachers alleging breach of the Child and Family Services Act by the principal, for failure to report allegations of child abuse by a staff member. The complaint referred to circumstances that allegedly occurred a considerable number of years earlier. Complaint dismissed as being outside the jurisdiction of the College due to the delay in making the complaint.
- A complaint to Children's Aid Society (CAS) by a parent (unrelated to the student in question) alleging assault by the principal who had been required to restrain a violent child

and to physically escort the child from the classroom. No case to answer since CAS concluded that the member had restrained the student in a reasonable and appropriate manner.

- A complaint to CAS by a parent following her child's violent outburst. This was the last of several violent incidents including an assault on a staff member. The principal was investigated for not providing a safe environment and for lack of supervision. The parent was a witness to all violent outbursts but alleged they were provoked by the school's actions and treatment of her son. CAS concluded that there was no case to answer.
- A complaint to the Human Rights Tribunal by a parent alleging racial discrimination by a teacher. The principal was a named respondent even though he had no direct involvement. A defence is still required on the principal's behalf.
- A complaint to the Human Rights Tribunal by a parent alleging discrimination by the board for invoking a Trespass Notice based on his behaviour relating to his advocacy on behalf of students with allergies. The principal was named as a respondent although no allegations were made personally against the member. A defence is still required on the principal's behalf.

In each of the above cases, the members reported the matter to STERLON and STERLON provided assistance. In the College matters, detailed responses were prepared by STERLON and legal counsel. In the cases before the Human Rights Tribunal, the members are being supported by the board's legal counsel but the files are monitored by STERLON.



Grievance Proceedings Versus Harassment Proceedings

The Ontario English Catholic Teachers' Association (OECTA) brings grievances against boards with some regularity and usually the board lawyers will deal with the process, involving the principal or vice-principal as witnesses and for information. Usually a grievance involves a third party interpretation of a contractual term. However, the member is not a party to the grievance and has no right of appearance. Sometimes, members are very unhappy with the manner in which these processes are settled and ask for their own legal counsel to protect their interest and to influence the outcome.

The Legal Benefits Plan does not contemplate coverage for grievance procedures since there is no dispute arising from a member's contract of employment and there is no threat of any disciplinary sanctions against the member. Since the member is not a party to a grievance, merely the subject matter of the grievance, the dispute is between OECTA and the board.

A member is able to contact 1-888-STERLON for telephone legal advice in these situations, which can often help to alleviate concerns and offer peace of mind.

How is the grievance proceeding different from a harassment in the workplace complaint? In this situation, the complainant makes a complaint directly against the member, based on an alleged breach in the workplace of a provision of the Ontario Human Rights Code. The consequence of a finding of fault can be some form of disciplinary measure by the board against the member up to and including dismissal. For this reason, it is important to seek independent legal advice by calling 1-888-STERLON so that assistance can be provided to safeguard your employment status. Some boards will allow a lawyer to attend to represent the member but this is not a universal protocol.

STERLON has seen an increase in these two types of complaints and often the facts are quite frivolous but still necessitate a full investigation by the board.

This article was prepared by STERLON Underwriting Managers Ltd., the administrators of CPCO's Legal Benefits Plan, as a service to CPCO members. It is intended to provide general information only and does not constitute legal advice. Members should contact the Telephone Legal Advisory at 1-888-STERLON for assistance.