

Client confidentiality and record-keeping



The duty of confidentiality and possible limits

The duty of confidentiality

Privacy is a fundamental right. The duty of confidentiality is one way the law protects a person's right to keep their personal information private. **Confidentiality** is as much an ethical principle of counselling as it is a legal obligation. The high level of importance assigned to confidentiality stems directly from the powerful role the counsellor plays in the client's life. Confidentiality is meant to ease the possible challenges that a client may face so as to permit them to feel safe in expressing painful or difficult experiences.

- **All AIDS service organization staff and volunteers, and other service providers owe each client a legal duty to maintain the confidentiality** of the client's personal information, including his or her HIV status or any information provided during counselling (e.g., information around sexual practices, disclosure to partners, etc.). Where a staff member or volunteer breaches the duty to maintain client confidentiality, the client can sue the staff member or volunteer and his or her organization in a civil court.
- Those who are part of a **regulated profession** (e.g., registered nurses, social workers or psychologists) have a **statutory and ethical** duty of confidentiality, usually described in the provincial and territorial acts and regulations that govern the profession. Where a member of a regulated profession breaches the duty to maintain client confidentiality, the client can file a complaint against the professional with the profession's governing body. The client can also sue the professional and his or her organization in civil court.
- In the context of counselling, confidentiality means that a client's **personal health information (including HIV status) can only be disclosed with the client's consent**, unless required by law (e.g., via subpoena or search warrant) or an ethical duty, or permitted by law or an ethical duty (e.g., to prevent harm to others). See, for instance, "Preventing harm to others" also in this section of this resource kit.
- **At the beginning of the counselling or service relationship, clients should be informed about the organization's duty to confidentiality and its limits.** In particular, clients should be made aware that information disclosed to a counsellor

could conceivably be used against them in a criminal investigation or prosecution. To know what information a client should be receiving around confidentiality, see the section on “Counselling in the context of the criminalization of HIV non-disclosure,” also in this resource kit.

Possible limits

There are **three important limits** to confidentiality:

1. Reporting obligations and potential interventions under public health laws;
2. Preventing harm to another person; and
3. Abiding by search warrants and subpoenas.

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