



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 159-2019**

**Dennis Coates**

**May 6, 2020**

**Summary:** The Applicant requested a copy of their counselling file from Professional Psychologists and Counsellors Professional Corporation (PPC). The Commissioner found that Dennis Coates, PPC director, is a trustee for the purposes of *The Health Information Protection Act* (HIPA) and that they have custody and control of the records. The Commissioner further found that records relating to any other type of counselling the Applicant may have received through PPC do not exist, and recommended that PPC take no further action.

### **I BACKGROUND**

[1] On April 29, 2019, the Professional Psychologists and Counsellors Professional Corporation (PPC) received the following request from the Applicant:

I am requesting a copy of my entire file – received counseling from [independent therapist]. I believe I started attending counseling in January of 2009... Prior to mediation, I received counseling from [independent therapist]. [sic]

[2] On May 1, 2019, PPC notified the Applicant that their records were ready to be picked up.

[3] On May 24, 2019, my office received a request for review from the Applicant.

[4] On June 6, 2019, my office provided notification to PPC and the Applicant that my office was commencing a review.

## II RECORDS AT ISSUE

[5] At issue is whether or not further records exist that would fulfill the Applicant's access request.

## III DISCUSSION OF THE ISSUES

### 1. *Is The Health Information Protection Act (HIPA) engaged and do I have jurisdiction to conduct this review?*

[6] HIPA is engaged when three elements are involved: 1) personal health information; 2) a trustee; and 3) the personal health information is in the custody or control of the trustee. With this in mind, I turn my attention towards determining if these three elements are present in the matter before me.

#### *Is there personal health information involved?*

[7] With respect to the definition of "personal health information", subsection 2(m)(ii) of HIPA provides:

2 In this Act:

...

(m) "**personal health information**" means, with respect to an individual, whether living or deceased:

...

(ii) information with respect to any health service provided to the individual;

[8] Upon review of the responsive records, it appears the Applicant signed an agreement with an independent therapist, who had been contracted by PPC at the time, for counselling assistance or services. To consider whether counselling services are "health services", I turn towards the definition of "health services" found at subsection 4(e) of *The Provincial Health Authority Administration Regulations*, which provides:

4 For the purposes of clause (a) of the definition of “health services” in section 1-2 of the Act, the following services are health services:

...

(e) counselling services;

[9] For the purposes of my analysis, I am satisfied that the definition of “health services”, found in *The Provincial Health Authority Regulations*, is useful to support that counselling is a health service. I find, therefore, that there is personal health information involved.

***Is there a trustee involved?***

[10] With respect to the definition of “trustee”, subsection 2(t)(xii)(A) of HIPA provides:

2 In this Act:

...

(t) “trustee” means any of the following that have custody or control of personal health information:

...

(xii) a person, other than an employee of a trustee, who is:

(A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or

[11] In Investigation Report 300-2017, my office contemplated a matter whereby a corporation that provided medical services reported a breach. In that report, I found that the corporation was not captured by subsection 2(t) of HIPA, but that the three directors, who were licensed pursuant to *The Medical Profession Act, 1981*, were trustees.

[12] According to Corporate Registry information from Information Services Corporation, PPC is owned by D.L.C. Holdings, whose directors and/or officers are listed as Dennis Coates and Louise Coates. Dennis Coates, according to the website for the Saskatchewan College of Psychologists, is a registered psychologist. Pursuant to Schedule M, Order in Council 280/2019, the Minister of Health has oversight for *The Psychologists Act, 1997*; therefore, Dennis Coates would be registered pursuant to *The Psychologists Act, 1997*. For the purposes of this review, I find that Dennis Coates is a trustee.

***Does the trustee have custody and control of the personal health information?***

- [13] Upon review of the *Independent Contractor Agreement* that is signed by PPC, as the corporation, and the individual contractors or therapists, I note the following :

THE Contractor hereby acknowledges that all information, including client lists, client notes, client files... summary of information regarding corporate clients, and all manuals and information regarding the procedures of the Corporation are the **exclusive property of the Corporation**... The Contractor hereby agrees to refrain from copying or retaining any such information in any form or media whatsoever and all such information shall be turned over to the Corporation upon demand by the Corporation or upon termination of this Agreement.

[emphasis added]

- [14] It appears to me that, by the terms of the aforementioned agreement, Dennis Coates, as trustee, has custody and control of client records created by the contracted independent therapist. I find, therefore, that HIPA is engaged and I have jurisdiction to conduct a review.

**2. Are there responsive records that do not exist?**

- [15] PPC searched for and provided the Applicant with responsive records it had in its possession dating back to counselling the Applicant received in 2009. This is noted by the date of the contract the Applicant signed with PPC (January 22, 2009), as well as the dates on the counselor's handwritten notes of their sessions with the Applicant. In their access request, the Applicant noted that, "prior to mediation, I received counseling from [independent therapist]". It appears the Applicant's belief is that more responsive records should exist with respect to another type of counselling they received, and so made their request for review to my office based on being refused access to part of the record.

- [16] In the matter before me, my office asked the Applicant if they could provide a more specific timeframe for when they would have undertaken the other type of counselling. The Applicant, however, was not able to recall other dates or timeframes. In an access request, it is the Applicant who sets the parameters of the access request, so that the trustee is able to conduct an adequate search for records. It also helps the trustee search for and establish

whether or not further records exist. It is not to say, however, that such counselling did not occur, but I have to complete my analysis based on the information before me.

[17] As part of its search efforts, PPC stated that it contacted the independent therapist, who verified to PPC that they did not retain any of the Applicant's records; as per their agreement with PPC, they had turned all records over to PPC. PPC added that the Applicant's "first clinical contact with PPC was January 8, 2009, when [they] called to book a clinical session with [independent therapist]". PPC added that the Applicant, "was also part of a small group mediation with one or more others, provided by [independent therapist] after this date". PPC further explained that these types of records "represent groups of clients where the focus is on a central (usually an organizational) theme". As such, PPC stated it does not retain clinical records on such sessions in the same way it does for "one-on-one, individual counseling", although it does keep group files. PPC noted that the file for the group session in question had been destroyed in 2017.

[18] My office also asked PPC what its retention policies are or how it would know a file had been destroyed. PPC responded that, "[w]e follow the Professional Practice Guidelines of the Saskatchewan College of Psychologists". These guidelines indicate that "[m]embers shall ensure that all information in their clinical service provision records, organizational client records, and supervision records are maintained for not less than seven years after the last date that services were rendered..." PPC further clarified its practice is to manually look at the last date of contact to ensure seven years have passed since last contact and then shred files based on verification of this date.

[19] Based on the information before me, the following factors lead me to believe that no other records exist regarding other counselling sessions the Applicant believes they received through PPC. These factors are:

1. If records for other counselling the Applicant undertook did exist that predate the January 2009 counselling or occurred around the same time, it is likely that PPC has destroyed them given its file destruction policy and practice outlined at paragraph [18]. I am also mindful that HIPA does not require that a trustee prove with absolute certainty that records do not exist.

2. PPC stated the Applicant participated in what appears to be a group session that occurred after their January 2009 counselling sessions with [independent therapist], but does not keep clinical records on people who attend such sessions in the way it does records for one-to-one counselling sessions. As such, it would not have an individual counselling record for the Applicant when they attended the group session. This is a reasonable explanation.

[20] Based on the preceding, I find that records relating to any other counselling the Applicant may have received through PPC do not exist.

#### **IV FINDINGS**

[21] I find that personal health information is involved, that Dennis Coates (PPC) is a trustee for the purposes of HIPA and that PPC has custody and control of the Applicant's personal health information.

[22] I find that records relating to any other counselling the Applicant may have received through PPC do not exist.

#### **V RECOMMENDATION**

[23] I recommend that PPC take no further action.

Dated at Regina, in the Province of Saskatchewan, this 6th day of May, 2020.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner