DISCLOSURE OF PSYCHOLOGICAL TEST DATA AND PROTOCOLS

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Psychologists and health facilities that conduct standardized psychological tests or assessments must be aware of limitations relating to the disclosure of psychological test data and protocols. Even in the face of a court order requiring the production of this type of information, the individual psychologist and/or the health facility may have a contractual obligation imposed by the test publisher to protect this information from disclosure. This may require the psychologist or health facility to become involved in court proceedings.

The Canadian Psychology Association and a number of provincial professional organizations recognize the special nature of psychological test data and test materials such as scoring keys and test protocols, and place restrictions on its collection, use and disclosure. Test publishers consider the raw data and test materials to be proprietary confidential information and trade secrets. They require psychologists and other qualified test purchasers to be bound by the publishers’ policy of non-disclosure in order to protect the integrity/validity of the assessment, to protect the public and the publishers’ intellectual property rights.

There are also protections built into the Ontario Personal Health Information Protection Act (PHIPA) that recognize the special nature of this information. Individuals are entitled to access to their personal health information under PHIPA, including the results from psychological studies or assessments. However, there is an exception for raw data from standardized psychological tests or assessments and an individual does not have a right of access to this information.

Responding to requests for psychological test data and protocols

Before responding to a request for disclosure and/or access to psychological test data or protocols, psychologists and health facilities must be aware of their professional, contractual and statutory obligations with respect to this information. It is quite common for raw psychological test data to be requested in personal injury cases. If a court order is being sought for production of this information, it may be necessary for the health professional or facility to intervene and to present arguments to the court as to why this information should not be disclosed. If a court order has already been obtained, the psychologist or facility may need to go back to court to vary the order.

Our Health Industry Practice Group regularly assists clients in responding to requests for personal health information, and with the development or review of informational policies and procedures.
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Kathryn Frelick is a lawyer practising in our Health Industry Practice Group and supervises the Legal Retainer Program. Kathryn provides advice to clients in areas of privacy, administrative law, regulatory law and health policy issues.

Our National Health Industry Practice Group is dedicated to providing comprehensive and integrated legal services to health industry clients. For more information about our group, visit our website at www.millerthomson.com or contact one of our regional contacts.

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