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## Professional Judgement in Ethical Decision-Making: Dialogue and Relationship

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### ABSTRACT

This article examines the role of professional judgement in the ethical decision-making process. Drawing on the personalist philosophy of John MacMurray, and the CCA Code of Ethics and Standards of Practice, the authors propose that a social constructivist approach involving dialogue and relationship complement the current internal psychologically based ethical decision-making models. An examination of the literature on ethical decision-making is followed by an overview of MacMurray's philosophy and its ethical implications for counsellors.

### RÉSUMÉ

Cet article examine le rôle du jugement professionnel dans le processus de prise de décision éthique. En se basant sur la philosophie personaliste de John MacMurray et sur le code de déontologie et les normes d'exercice de l'ACC, les auteurs proposent l'emploi d'une approche socioconstructiviste, centrée sur le dialogue et les relations, pour compléter les modèles courants de prise de décision éthique, qui sont de nature interne et psychologique. Un examen de la documentation sur la prise de décision éthique est suivi d'une revue de la philosophie de MacMurray ainsi que de ses répercussions éthiques pour les conseillers et conseillères.

As more people seek the help of counsellors to address and clarify personal issues, more questions arise regarding the nature of counselling and the ethical concerns surrounding the practice of counselling. While principles, ethical codes, and standards of practice are important considerations for both the profession of counselling and individual counsellors, the question addressed in this article is the role of judgement in the ethical decision-making process. What informs judgement? What are the criteria for "good" judgement? How do the perceived consequences of this judgement influence the decision-making process?

In this article we put forth as our major premise the notion that judgement in ethical decision-making models needs to be more inclusive of relationship and that dialogue in such a relationship is an essential dimension in the discernment process. Following a review of relevant literature, this article presents a summary of the personalist philosophy of John MacMurray as a framework for Cottone's constructivist approach to ethical decision-making.

### LITERATURE REVIEW

The literature in the area of ethical decision-making typically addresses the values and principles upon which codes of ethics and models of ethical decision-

making are based. “No longer does it appear sufficient to call upon deductively derived, universal principles and rules to guide action” (Holstein & Mitzen, 2001, p. 3). Relatedly, Ford (2001) suggests that:

Each person possesses ethical beliefs which are guidelines that provide moral direction and organization for her conduct. Her beliefs provide her with a sense of what is the right thing to do in a particular situation. Underlying those beliefs are the ethical values she subscribes to, the general principles that constitute her sense of what is right and what is wrong, what is good and what is evil. (p. 2)

Ford (2001) cites the work of Fletcher (1966), a situational ethicist whose work has implications for the ethical issues in counselling today. Fletcher’s situational ethics are pragmatic in that they address the consequences of particular acts within particular situations. No moral rules are viewed as being valid in every context every time. Fletcher identified four considerations that are important to the process of applying ethical principles in a given situation. A person must identify the end sought and the means required to obtain it, as well as the motive behind an act and any probable consequences of such an act. The fundamental principle underlying the ethical decision-making model, in this view, is that the ethical complexity of a situation must be assessed initially, then continually reassessed in light of new information and the progress of practical reasoning within this situation.

Barnett (2001) adds to the discussion by suggesting that “[e]thical decision making is a complex process affected by personal, situational and issue-related factors. The moral intensity of ethical issues appears to be a key characteristic of ethical issues that affects decision making” (p.1055). The four moral intensity dimensions are: seriousness of the consequences, social consensus on what is right or wrong, temporal immediacy (now or later), and proximity (how close the counsellor is to the client). In addition, Cottone (2001) expands on this process of decision-making by offering a social constructivist model of ethical decision-making in counselling. He proposes that ethical decision-making is “socially constructed,” countering the current belief that it is “in the mind” of the decision maker, and that social constructivism “stands apart from objectivism and relativism in the primacy of relationships.” (p. 41). Ethical decision-making is viewed not as occurring internally but as an interpersonal process of negotiating, consensualizing, and arbitrating. The decision-making model in this view involves obtaining information, assessing the nature of relationships, consulting valued colleagues, negotiating disagreement, and seeking reasonable consensus.

#### PERSONALIST PHILOSOPHY

Following Cottone’s argument, judgement is seen not simply as individualistic in nature, that is, an individual in isolation decides something, but rather a social process in which an individual decides with others. To resolve the issue of the “personal versus the social” we call on the philosophy of John MacMurray (1957,

1961). MacMurray's critique of Enlightenment philosophy is essentially that it is too theoretical and egocentric. This philosophy is theoretical in the sense that it is grounded in the abstract notion of consciousness (I think therefore I am), and egocentric because it is based on the "I" as an isolated unit of analysis. MacMurray suggests that from Descartes' standpoint of the self as "thinker" the "I" withdraws into itself, adopting an attitude of spectator, not of participant (1961). MacMurray (1957) shifts the "I think" notion to the "I do," which he claims is grounded in practical experience. He purports that the essential nature of personhood is that of "agent" not "thinker." The self is, however, not merely defined by its agency. The self exists only in relation with another; that is, it has its being in relationship. He replaces the "I" with the "You and I" as the basic unit of reference. The "I do" expresses the primacy of action. The "You and I" expresses the primacy of the relational or communal. In reference to ethics and in particular ethical decision-making, MacMurray's philosophy highlights the problem of psychologically based decision-making models, and offers the inter-relational context as an alternative.

For MacMurray (1957), action and thought are not separate. Action is the whole and is constituted by and includes reflection. While one of the characteristics of agency is the unity of action and reflection (an important consideration especially in the realm of ethics), other characteristics include motivation and intention. According to MacMurray (1957), every action is in part constituted by a motivation, a feeling that governs the expenditure of energy by selecting its direction. The feeling is either positive or negative. Positive motivation is regard for the other; negative motivation is fear for oneself. Negatively motivated action is defensive, fearful, and anxiety provoking. Positively motivated behaviour extends the agent (the one acting) through the reaching out to another. Motivation is a serious issue in a discussion of ethics since a dilemma may arise from the realization that the action taken may come from a negative motivation (fear for oneself) or a positive motivation (fear is subordinate to the notion of care for the other and the mutuality of relations).

While motivation is key to agency, what determines action is its "intention." As agents we act with intention. We intend a modification of the other to be determined by our agency. As agents, what we do is guided by what we know of the other and what we want to have happen in our relation with the other. In the field of ethics, the notion of intention is an essential consideration since there are several possibilities for action. Since action includes intention, we should be able to assess such intention by observing the action. People do what they intend to do even if they are sometimes unaware of their intention. In MacMurray's philosophy the personal/social issue is resolved by arguing that the social or interpersonal is primary and that personal reflection is embedded in this construction. In ethical terms people make judgements or decisions always in reference to the social and cultural context in which they find themselves.

## A SOCIAL CONSTRUCTIVIST PERSPECTIVE

As previously noted, Cottone (2001) puts forth a constructivist approach to professional judgement, what he refers to as ethical decision-making. He contends that we need to move away from the traditional psychologically based ethical decision-making models where decisions are discerned or reached internally, to models where decisions are socially constructed. Cottone phrases it thusly, "What social constructivism means to ethical decision making is that decisions can no longer be viewed as occurring internally. Therefore, from a constructivist perspective, decisions are moved out of the intrapsychic process and into the interpersonal realm" (p. 40). Cottone defines social constructivism as an intellectual movement in the mental health field that directs a social, consensual interpretation of reality. He quotes from Ginter et al. (1996), who suggest that social constructivism implies that what is real is not objective fact; rather, that which is real evolves through interpersonal interaction and agreement as to what is fact.

Moving professional judgement away from internally created processes into a social arena means that the wisdom from collected experiences comes to bear on ethical decision-making. Individual idiosyncrasies or idiosyncratic ways of thinking are now part of the diversity of opinions contributing to the decision. For example, culture sways the way we think, and contributes significantly to what is generally referred to as *common sense*. We are faced often with scenarios that require interpretation or we are asked to provide answers to questions which may or may not be within the realm of ethics but where we automatically think, "The answer to this question is easy, it's actually common sense."

Cottone (2001) discusses three processes that are, from a social constructivist position, important in ethical decision-making. These processes are *negotiating*, *consensualizing*, and *arbitrating*. He describes the interactive process of socially constructing an outcome to an ethical dilemma in the following way:

After information is obtained, the nature of relationship is assessed, and valued colleagues and experts are consulted, the interactive process of socially constructing an outcome to an ethical dilemma involves negotiating (if necessary), consensualizing, and arbitrating (if necessary). The ultimate goal is to establish consensus among involved parties about what should or did happen in a questionable circumstance. When consensualizing fails, then parties may partake in *interactive reflection*, a process of conversation with trusted individuals to come to agreement as to whether arbitration should be sought or whether a position needs to be modified to re-enter negotiation. If consensualizing fails after interactive reflection, then arbitration is necessary. (p. 43)

By using a process where there is dialogue or "conversation" with others who are involved, Cottone believes that "a truth" will be reached, one that is socially agreed upon by the involved parties. He believes that "the truth" may never be known, even though a judgement may occur. Aside from arbitration when there is dispute (i.e., there are competing truths), only in cases of repeated offences can "a truth" be established.

Dialogue with others in the ethical decision-making process, clients and professionals alike, reduces the likelihood that decisions will reflect an individual's *common sense* rather than "a truth" that is consensually reached. Though we may never uncover "the truth" of a situation, if indeed "the truth" exists, we may arrive at an "objectivity in parentheses," where the parentheses are the boundaries of human interaction (Maturana, 1988).

#### PERSPECTIVES ON CURRENT PRACTICE

How do dialogue and a social constructivist approach assist counsellors practicing across Canada and elsewhere? Pettifor (2001) states that Canadian Codes of Ethics are based upon sets of principles (unlike the American Codes, which are more legalistic and rule-oriented in nature) in which decisions are left to the professional counsellor as to the ethical rightness and wrongness of any given situation. Counsellors are often faced with situations requiring them to weigh the importance of two or more principles in order to judge the rightness and wrongness of a situation informing them in their choice of action. We believe it is necessary for counsellors to move these decisions out of the intrapsychic discernment process to an interpersonal discernment process, to allow ethical decisions to be socially assembled, not internally constructed. This social constructivist approach to decision-making is in keeping with a mutual and egalitarian relationship rather than an expert/client relationship where the counsellor is active and the client is passive. In MacMurray's philosophical terms, the social constructivist position is more relational in nature and involves the self as active rather than passive. Cottone's notion of interactive reflection is a good example of MacMurray's philosophy of agency and relationship. The agent engages with other agents in an effort to shed light on a reflective process that leads to an action and a decision.

The Canadian Counselling Association's (CCA) Code of Ethics (CCA, 1999) and Standards of Practice (CCA, 2001) (herein called *Standards*) help counselling practitioners make informed judgements on a day-to-day basis. The Code of Ethics informs the counsellor about ethical and unethical practice and is based upon principles that are believed to be worthy of professional counselling. *Standards*, on the other hand, begins to articulate sound ethical practice for counsellors, highlighting those activities that counsellors should be doing in their day-to-day practice. This manual allows the counsellor to interpret the Code of Ethics and put it into practice. For example, regarding the question of whether or not a counsellor should keep counselling notes or whether a child's counselling notes should be released to a third party, *Standards* advises and suggests protocols for a course of action, protocols that should be followed by all practicing counsellors.

The standards are suggested guidelines for practice. For most counsellors, these guidelines provide a reference point or a departure point from which they can make informed judgements about their own practice. For example, at a recent

workshop on ethics, a participant asked, “Am I being unethical because I do not keep notes?” She then proceeded to reveal that she worked with sexual abuse victims, and it was her belief that keeping notes would not be in the best interest of her clients. To have concluded that she was engaged in unethical practice was to employ the same reasoning that may have led her to rationalize not keeping any notes; namely that the decision or the personal judgement to not keep notes was based upon her personal belief that she was doing the “right” thing. The legitimacy of her question was acknowledged and a recommendation was given that she engage in dialogue with other professional counsellors regarding her decision. Though *Standards* says that she should keep notes, there is currently a departure from this recommendation. The above example will be referred to later in this article, as the concept of professional judgement and the importance of dialogue and relationship (Sumarah, Lehr, & Wheeldon, 2000) in the discernment of ethical professional practice is explored.

Codes of Ethics generally guide counsellors in their professional decision-making. Counsellors are frequently faced with issues pertaining to what they ought to do or how they ought to act in particular situations: Should one enter into a counselling relationship with one’s mother’s friend? If one knows a case will go to court, should one keep notes? If case notes are subpoenaed, is there any alternative to releasing them? Is confidentiality in schools different from confidentiality in private practice?

Pettifor (2001) suggests that codes are based upon philosophical assumptions of what is right and wrong, and “reference points for ethical decision making are primarily the ethical principles” (p. 29). Most counsellors would agree that codes are not in place simply as rules to be followed, but are there as support in their practice of caring for and helping others. The same could be said for *Standards*, which, in the Canadian context, means or intends to mean an expansion upon the Code of Ethics (CCA, 1999); that is, to make more explicit the role of the counsellor. In other words, *Standards* should allow counsellors the opportunity to measure that which they do in relation to the community of professional counsellors. From a legal perspective, *Standards* allows courts a “yardstick” by which the courts might assess the actions of counsellors relative to the profession’s perspective of “reasonable.”

Returning to our example of the workshop participant, a court may ask whether it is reasonable for a sexual abuse counsellor to not keep written notes on her clients. If reference is made to *Standards* only, it might be reasonable to assume that this counsellor is not acting according to the ethical standards of the profession. Using *Standards* as a legalistic rule book discounts the value of counsellors’ actions in the various contexts in which they find themselves. It ignores the fact that the Code of Ethics (CCA, 1999) has a set of principles or a moral foundation on which rules and standards are based. These principles are not prioritized. We cannot say, for example, that not wilfully harming others is a principle that is valued more than respecting the dignity of others, unless we engage in a process of determining what is more important to us. The principles

ignore that which is most fundamentally valued by the profession of counselling itself: Dialogue!

Though *Standards* states that “counsellors shall maintain records with not less than...” and a list of requirements is offered (see p. 12), the manual says nothing about the different contexts in which counsellors work nor does it address the various belief systems out of which individual counsellors practice. Further, we might reasonably assume that courts would need to turn to representatives from the social context in question, and ask those representatives whether *not* keeping notes is their standard practice. We would, therefore, need to assume that counsellors representing this particular social context would have gone through a process of discernment, of critical reflective practice that included dialogue with other counsellors. Pettifor (2001) put it quite succinctly when she stated:

The ethical decision-making process shifts the focus from a rules orientation to a consideration of values in relationships and the inherent worth of all human beings. It becomes necessary to think through each context in order to find what is right, best and moral for those involved. (p. 33)

Though Pettifor was referring to ethics in a multi-cultural context, her statement has general application in other contexts as well.

#### DIALOGUE AND DISCERNMENT IN ETHICAL DECISION-MAKING MODELS

Schulz (2000), drawing on several models of decision-making, puts forth what he describes as an integrative model with six steps for counsellors to consider in making decisions about ethical dilemmas. Schulz indicates that his model adds a feeling/emotional dimension to the largely cognitive/rational decision-making steps of other models. Though these concepts are intrapsychic or internal in nature, they may add to what Kitchener (1984) describes as involving the decision-maker’s “intuitive” and “critical evaluative” reasoning. The first couple of steps in Schulz’s integrative model suggest that ethical decisions can be made by referring to the Code of Ethics (CCA, 1999). If a decision cannot be made by referring to the Code, the counsellor proceeds to step 3 and 4, which ask the counsellor to reflect on the principles upon which the Code is based, and choose “the most important principles and relevant ethical articles and (begin) to implement some possible action” (Schulz, 2000, p. 12). The possible action includes “generating alternatives and examining the risks and benefits of each alternative, securing additional information and/or consulting with colleagues, and examining the probable outcomes of various courses of actions” (p. 12). The fifth step in this process, which up to this point has been an intrapsychic/cognitive assessment of the situation, includes feelings and emotions, and again asks the lone counsellor to internally reflect upon their own process either by taking solitary walks, by “sleeping on it,” or by fantasizing about future scenarios. The last step is taking action.

As we introduce dialogue and social constructivist thinking into the above integrative model and the discernment process, we see how the ethical decision-making process can be improved. Conceptually, we believe there are some



assumptions that must be adhered to in this process. First, we accept the notion that there is no one truth per se, but that there is “a truth” which can be reached when engaged in a consensualizing process. Second, a model based upon interpersonal dialogue and social constructivist thinking does not exclude the intrapsychic or internal dimension but rather seeks to hone it by bringing it into the social and interpersonal realm. Third, the interpersonal process and the dialogue in which the two persons are engaged simply represent “a truth,” and further dialogues could add other dimensions to ethical decision-making for counsellors.

We propose that dialogue or conversation with others is the very *first* step in this process of discernment, and that the counsellors need to go beyond individual assessment or evaluation about what is morally or ethically right or wrong. We suggest counsellors go beyond mere acceptance of the Code as if it were a sacred set of rules, and begin a conversation with other counsellors about what they believe is “a truth” for them. For example, when the Code talks about avoiding dual relationships, what experiences have others had that might contribute alternative information to this particular perspective of avoidance? Through dialogue, the complexity and three-dimensionality of the situation unfold in a way that could not possibly be discerned by counsellors with dissimilar cultural backgrounds or working contexts. As counsellors arrive at a clearer understanding of their beliefs and those of others, they may have a better understanding of the meaning of the Code.

In steps three and four (Schulz, 2000), counsellors may again participate in conversation around the principles upon which the Code of Ethics was created. The first step in this conversation may indeed be a personal interpretation or examination of what the principles mean to the counsellors. However, it is important to understand how other people interpret and understand these principles. Would a counsellor from Newfoundland, for example, hold the same interpretation of the principle “Responsibility to Society” as would a counsellor from Saskatchewan? Nebraska? India? Pettifor (2001) suggests that, “Prioritizing respect for the dignity of individual persons as higher than responsibility to society is clearly a Euro-American cultural belief, and may not be accepted in cultures that place the individual secondary to family, community, or society” (p. 31). Through dialogue, a greater understanding is reached so that when counsellors have to resolve ethical dilemmas, it is easier to discern “a truth” of a particular situation.

In the current integrative model, an individual psychologically based approach guides the counsellors through the decision-making process. By addressing problems in the social realm and in the interpersonal arena, solutions are reached through a process of what Cottone (2001) refers to as *interactive reflection*. When this process takes place, other steps in the process become clearer, steps including the cognitive/reasoning of generating alternatives and probable outcomes, as well as the affective part of the process. In these steps, drawing upon the interpersonal allows individuals to expand their interpretation of any particular situation rather



than relying solely upon their own personal reaction or biased reasoning. In addition, interactive reflection has a social and cultural context that needs to be considered when making ethical decisions. Dialogue and interactive reflection are influenced by an awareness and appreciation of the cultural context. The same persons involved in interactive reflection may vary their judgements and decisions in different contexts.

#### AN ETHICAL EXAMPLE

Let us suppose that a practicing counsellor has been called by a very good friend. She is at the emergency ward of the hospital with her husband and daughter. The daughter overdosed and there is some concern about saving this 16-year-old. A short time after the counsellor arrives at the hospital, the situation becomes less critical and the medical staff believe that the young woman will survive.

The attending physician tells the parents that there must be something troubling their daughter for her to feel this badly about herself. The physician recommends strongly that the parents arrange for their daughter to see a counsellor. The mother says quickly that the best one they can think of is presently with them in the hospital. The counsellor says little, knowing the context does not warrant a debate about the ethics around seeing their daughter. The parents are relieved that their daughter did not die and that all she really needs is counselling.

The counsellor/friend wants to be helpful but is aware of the possible consequences of saying *yea* or *nay*. The counsellor holds back the inclination to recommend another good counsellor. Indeed, living in a rural area brings into question the availability of a qualified counsellor. The parents are clear about who they want to counsel their daughter. Already the counsellor is beginning an internal process of discerning a course of action. The counsellor quickly deliberates with trusted colleagues. Together they discuss the pros and cons about the possible courses of action. While the Code of Ethics is clear about avoiding dual relationships, the counsellor continues to ponder the dilemma.

While the counsellor is uncertain about what to do, the counsellor discusses with colleagues, the consequences of agreeing and not agreeing to provide the counselling. Suppose that after conferring with the parents, the daughter, and trusted colleagues the counsellor agrees to proceed. The counsellor understands from the conversations that the daughter will need to know what will be shared with her parents. The counsellor concludes that phoning the parents from the office with the young client present will assure trust in the relationship.

This example provides a picture of the value of interpersonal reflection. The reflection involves a dialogue with the parents, their daughter, and trusted colleagues. Since relationships are primary in MacMurray's personalist philosophy terms, ethical dilemmas are framed with others. Since the social constructivist approach of Cottone advocates moving the discussion into the interpersonal realm,

practitioners need to decide with whom to interact and why. The motivation, intention, and choice (MacMurray's terms) to dialogue is to advance not only the counsellor's sense of agency but others' agency as well. The parents and the daughter have input into the decision, knowing the limitations of communication. The interpersonal reflection is not simply a one-time activity. Once the decision is made to see the client, there remains the issue of what to share with the parents and how to do this in a fashion that respects the confidence of the client. Interpersonal reflection keeps everyone involved alert to the issues and how to address them.

#### CONCLUDING THOUGHTS

Professional judgements are part of a process and happen within the context of a relationship. Counsellors want to be faithful, reverent, truthful, respectful and trustworthy (Haring, 1987). They want to consider situations in their entirety. Counsellors generally want to respect and be guided by the law and the Code of Ethics, and to assist people to reach greater freedom and dignity in their lives. When counsellors rely solely upon their own reasoning and internal discernment, they may feel inadequately prepared to professionally judge situations in all the complexity of these situations.

The challenge for counsellors regarding a Code of Ethics and Standards of Practice may be similar to the challenges of law. Is it the words of the Code or the spirit of the Code that are to be followed? While Codes of Ethics provide a framework, they cannot recommend a solution for every situation. The law and the code inform our judgement, but the circumstances around each situation also inform our judgement and require an intelligent and reasonable response that leads to greater growth and maturity.

In conclusion, we contend that current psychological models of ethical decision-making rely too heavily upon individual interpretation of existing codes and principles and fail to take into account the social context within which ethical dilemmas occur. Furthermore, we contend that dialogue using a social constructivist model allows counsellors to use a process of discernment that benefits from the inclusion of others.

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