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## Membership Advisory

### in Loco Parentis<sup>1</sup>

The Canadian Code of Ethics 3<sup>rd</sup> Edition directs psychologists to obtain informed consent in the provision of psychological services, and in the case of a minor, or one not competent to provide consent this must be obtained from their legal guardian.<sup>2</sup> Compliance with the Code is required under the legislation and bylaws of the SCP. Failure to comply with the Code may be viewed as professional misconduct and may result in formal discipline.

Psychologists working in certain institutional settings, such as schools, custody facilities or hospitals, may be tempted to rely on the legal doctrine of *in loco parentis* to avoid obtaining consent, but should do so with great caution.

Literally, *in loco parentis* means “in place of the parent”. Application of the doctrine occurs when a “person or legal entity undertakes the care or control of a person lacking legal capacity in the absence of supervision by the person’s natural parent or in the absence of formal legal approval (e.g., adoption, guardianship).”<sup>3</sup>

The intent of the legal doctrine is not to appropriate the right to consent from a fit parent or guardian or legal caregiver, nor is it to be applied as a matter of course to expedite activities/actions, nor does it automatically apply simply because a child is temporarily placed in the care of other persons.

The doctrine has commonly been applied in school systems to justify discipline of students, but is appropriately used in that context ONLY when it is applied for the purpose of educating the child.<sup>4</sup> Nor is the doctrine applicable to all persons employed within the institution. For example, the Courts have held that school counsellors in their role as counsellors do not perform services directly related to education, and are not school teachers.<sup>5</sup> Thus, the doctrine does NOT automatically extend to the provision of psychological services, even if they are provided within the school. It is also important to stress that being *in loco parentis* does not allow teachers to “consent” on behalf of parents or guardians in order to provide psychological services to a minor child.

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<sup>1</sup> This Practice Advisory has been prepared with the assistance of legal counsel to the College, Rasmussen Rasmussen & Charowsky LPC.

<sup>2</sup> Canadian Code of Ethics for Psychologists Third Editions, Canadian Psychological Association, 2000

<sup>3</sup> Black’s Law Dictionary 787 (6<sup>th</sup> ed. 1990)

<sup>4</sup> Blackstone, Commentaries on the Laws of England, Book I, chap. 16, p. 441(1769)

<sup>5</sup> *R. v. Ogg-Moss*, [1984] 2 S.C.R. 173.

As a result, psychologists working in schools or other systems where the *in loco parentis* doctrine may be invoked are required by the Code of Ethics to obtain informed consent from the legal parent/guardian/caregiver of the child, except in cases of emergency.

Similarly, a related concept, the “mature minor” is not applied as a matter of course, and the psychologist must be able to justify its use in each case and to demonstrate that the specific minor is capable of providing informed consent.