

Three Cases

- Susan is the personal tax accountant for Jane, who is the CEO of a Fortune 500 company. Jane asks Susan for advice regarding her stock options and RRSP holdings, as she is quietly planning to retire in two years. Is the news of Jane's pending retirement considered confidential information?
- Sam is the personal tax accountant for his neighbour, Jim, who is the lead partner in a private business that is going public. Based on Jim's personal tax information, it seems that he has been secretly and illegally directing funds from the business into his private bank account. Does Sam have a duty to disclose this to any regulatory authorities? May Sam disclose this to his other neighbour, who is planning to invest her entire RRSP into the IPO?
- Sarah, an accountant, possesses confidential information; failure to share it with her friend David is likely to cause David harm. Sarah consults a lawyer, who explains that she may not share the information, but Sarah believes she has a religious obligation to save David from harm. What should Sarah do?

The Principle of Confidentiality: Canada, the CPA of Ontario, and Jewish Law

1. Jared A. Mackey, *Privacy and the Canadian Media*, Western Journal of Legal Studies 2:1 (2012)
<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1054&context=uwojls>

With the recent recognition of the new tort of "intrusion upon seclusion", Canadian privacy law has experienced a fundamental and modernizing shift. In *Jones v Tsige*, the Ontario Court of Appeal held that a person is liable for an invasion of privacy, if "he or she intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns [...] if the invasion would be highly offensive to a reasonable person."

2. Chartered Professional Accountants of Ontario – Submission for Public Consultation, June 17, 2016
<https://www.fin.gov.on.ca/en/consultations/fpfa/rfp-submissions/2016/cpa-ontario.html>

Taken together, we submit that these principles, which are elaborated upon in the Code and rigorously enforced, impose a "best interests" duty upon CPAs in Ontario and elsewhere.

3. CPA of Ontario, *CPA Code of Professional Conduct*, Preamble: Fundamental Principles Governing Conduct
Chartered Professional Accountants protect confidential information acquired as a result of professional, employment and business relationships and do not disclose it without proper and specific authority, nor do they exploit such information for their personal advantage or the advantage of a third party.

4. CPA of Ontario, *CPA Code of Professional Conduct*, Preamble: Definitions
"confidential information" means information acquired in the course of a professional services relationship with a party. Such information is confidential to the party regardless of the nature or source of the information or the fact that others may share the knowledge. Such information remains confidential until the party expressly or impliedly authorizes it to be divulged. In the case of an employee-employer relationship, a member has legal obligations to the employer that include a duty of confidentiality. The CPA Code imposes a duty of confidentiality as a professional obligation, which is in addition to the member's legal obligation to the employer.

5. CPA of Ontario, *CPA Code of Professional Conduct*, Section 208: Confidentiality of Information
208.1 A member or firm shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer except when:

- (a) properly acting in the course of carrying out professional duties;
- (b) such information should properly be disclosed for purposes of Rules 101, 211 or 302;
- (c) such information is required to be disclosed by order of lawful authority or, in the proper exercise of its duties, by CPA Ontario;
- (d) justified in order to defend the member, firm or any associates or employees of the member or firm, against any lawsuit or other legal proceeding or against alleged professional misconduct or in any legal proceeding for recovery of unpaid professional fees and disbursements, but only to the extent necessary for such purpose; or
- (e) the client, former client, employer or former employer, as the case may be, has provided consent to such disclosure.

208.2 A member or firm shall not use confidential information of any client, former client, employer or former employer, as the case may be, obtained in the course of professional work for such client or employer:

- (a) for the advantage of the member or firm,
 - (b) for the advantage of a third party; or
 - (c) to the disadvantage of such client or employer
- without the consent of the client, former client, employer or former employer.

208.3 A member or firm shall:

- (a) take appropriate measures to maintain and protect confidential information of any client, former client, employer or former employer, as the case may be and to ensure that access to such information by another person is limited to those with legitimate purpose to access the information; and
- (b) obtain the written agreement of any such person to carefully and faithfully preserve the confidentiality of any such information and not to make use of such information other than as shall be required in the performance of appropriate professional services

6. Chartered Professional Accountants of Ontario Act, 2017, S.O. 2017, c.8, Sched. 3

60 (1) Every person engaged in the administration of this Act and the by-laws shall preserve secrecy respecting information or material that comes to his or her knowledge or possession in the course of his or her duties under this Act, a predecessor Act or the *Public Accounting Act, 2004*, and shall not disclose any such information or material to any person except...

- (e) if there are reasonable grounds for believing that there is a significant risk of harm to any person if the disclosure is not made and that making the disclosure is likely to reduce the risk; or

7. LSUC, Rules of Professional Conduct (2014), Rule 3.3-3

A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary [2] The Supreme Court of Canada has considered the meaning of the words "serious bodily harm" in certain contexts, which may inform a lawyer in assessing whether disclosure of confidential information is warranted. In *Smith v. Jones*, [1999] 1 S.C.R. 455 at paragraph 83, the Court observed that serious psychological harm may constitute serious bodily harm if it substantially interferes with the health or well-being of the individual.

8. Talmud, Yoma 4b

מניין לאומר דבר לחבירו שהוא בבל יאמר עד שיאמר לו לך אמור שנאמר "וידבר ד' אליו מאהל מועד לאמר"

How do we know that one may not repeat something told to him until he is told, "Go tell it"? It is written: "And Gd spoke to him from the Tent of Meeting, to go tell."

9. Maimonides, Mishneh Torah, Laws of Oaths 5:15

הנשבע לחבירו שלא אעיד לך עדות זו שאני יודעה או שלא אעיד לך אם אדע לך עדות הרי זה לוקה משום שבועת שוא מפני שהוא מצווה להעיד.

One who swears to another, "I won't offer regarding you the testimony I possess," or, "I won't testify regarding you if I do know testimony," is lashed for a vain oath, for he is commanded to testify.

10. Rabbi Yehoshua Falk (16th century Poland), Sefer Meirat Einayim 378:4

משום דשם (בסי' קנד) הראיה מצד עצמה אין עושה בהן היוק אלא שגורמת היוק, כגון שחבירו לא יעשה עסקיו בחצר מכה הבושה ממנו... In Code of Jewish Law 154:3, sight [of the property] itself does not harm, but it leads to harm, as the other cannot go about his business in his yard due to embarrassment.

11. Rabbi Aharon haLevi (13th century Spain), Sefer haChinuch 236

משרשי המצוה, כי ד' חפץ בטובת הבריות אשר ברא, וצונו בזה כדי להיות שלום בינינו, כי הרכילות סיבה לריב ומצה.

Among the roots of this command is that Gd desires the good of His creations, and He instructed us in this so that there should be peace among us, as gossip is cause for quarreling and strife.

12. Michah 6:8

הגיד לך אדם מה טוב ומה יד' דורש ממך כי אם עשות משפט ואהבת חסד והצנע לכת עם אלקיך:

He has told you, Man, what is good: What does Gd require of you but to do justice, to love kindness, and to walk privately with your Gd?

13. Midrash, Sifra Kedoshim 2

ולפני עור לא תתן מכשול לפני סומא בדבר... היה נוטל ממך עצה, אל תתן לו עצה שאינה הוגנת לו

"Do not place a stumbling block before the blind." This means: Before someone who is blind in a given matter... If someone asks your advice, do not give him improper advice.

14. Talmud, Sanhedrin 73a

מניין לרואה את חברו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו תלמוד לומר לא תעמד על דם רעך

How do we know that one who sees another drowning in a river or being dragged by a beast or being beset by bandits must act to save him? The Torah says: You shall not stand by the blood of your peer.

15. Maimonides, Mishneh Torah, Laws of Gifts to the Needy 8:12

אין פודין את השבויים ביתר על דמיהן מפני תקון העולם, שלא יהיו האויבים רודפין אחריהם לשובתם,

We do not redeem captives for more than their value, for society's sake, lest the enemy pursue them to capture them.

Our Cases

16. LSUC, Rules of Professional Conduct (2014), Rule 3.3-1

A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship...

17. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 13:81:2

ובודאי הברור שמותר וגם חייב למסור על מחלתו לשלטונות

It is of the greatest certainty, one is permitted and also obligated to inform the authorities of this person's illness!

18. Maimonides, Book of Mitzvot, Prohibition 297

...כשנראהו בסכנת המות או ההפסד ויהיה לנו יכולת להצילו.

...when we see he is in danger of death or loss and we are capable of rescue.