There can be few, if any, psychologists who are unaware of the *Tarasoff v. Regents of the University of California* (1976) decision and the impact it has had on the profession of psychology. Psychologists are often privy to the most intimate aspects of clients' lives. But this knowledge can be a double-edged sword when concern arises that a client may pose a threat to others. A ethical conflict arises between the psychologist’s professional obligation to respect the autonomy of the client, and an obligation to protect the foreseeable victims of the client’s violent actions.

Legal practitioners frequently speak in terms of legal duties owed between people. In stating that a legal duty exists they are saying, in shorthand, that in light of all policy considerations a particular standard of conduct is owed by one person to another. In the absence of such a duty there is no obligation to act in a particular manner. Such duties may be created by the legislature, by the courts, or by the general understandings of everyday existence. What is important to understand is that to state that a legal duty exists is to draw a conclusion based on the facts of a certain situation, and not a statement of fact in itself.

For psychologists the most obvious legal duty is that owed to their clients to exercise "that degree of care and skill which could be expected of a normal, prudent practitioner of the same experience and standing" (*Crits v. Sylvester*, 1956). Failure to meet this standard of care is considered negligence; if it results in harm to the client it is considered malpractice, and may form the basis for civil liability.

Prior to *Tarasoff*, psychologists tended not to be concerned about legal liability arising out of their clients' behaviour outside the professional relationship. The *Tarasoff* court ruled, however, that psychotherapists in California have a duty to exercise reasonable care to protect the potential victims of their clients' violent behaviour. Although relevant only in California, almost every other jurisdiction in the United States as well as Canada has applied analogous legal reasoning (Truscott, 1993). Although some jurisdictions differ, the duty to protect generally exists where a client has been (or reasonably should have been) assessed to be a serious threat of physical violence to a reasonably identifiable victim or victims and the chain of causation that results in harm is clear.

There are two important facts of note regarding the *Tarasoff* ruling. First, *Tarasoff* did not establish a "duty to warn", as is often incorrectly asserted. An earlier, and much publicized, 1974 decision (*Tarasoff v. Regents of the University of California*, 1974) did rule that California psychotherapists had a duty to warn, but that ruling was reheard by the California Supreme Court and superseded by the 1976 duty to protect decision. Second, there is no duty to protect third parties or to warn third parties in the case of suicide. There is a legal requirement that parents of minors be notified when their
children are suicidal (Truscott & Crook, *in press*), and there certainly are circumstances where other individuals should be involved in order to properly implement a treatment plan, but psychologists should not confuse their legal responsibility to protect third parties when a client is homicidal with their legal responsibility when a client is suicidal.

The facts of the *Tarasoff* case make for instructive reading from both a professional and legal point of view.

The *Tarasoff* Case

Prosenjit Poddar was a 26 year old graduate student in naval architecture at the Berkeley campus of the University of California when he was brought to the Cowell Memorial Hospital of the University of California in July of 1969 by his friend. He was seen by Dr. Gold, a psychiatrist. Mr. Poddar's friend told Dr. Gold that he believed Mr. Poddar had become pathologically obsessed with Tatiana Tarasoff, a 19 year old student he had met at a dance in the fall of 1968. Mr. Poddar had tape-recorded conversations with the young woman and spent hours replaying the tapes in order to ascertain her feeling for him, had threatened to kill Ms. Tarasoff, and had said that he planned to purchase a gun. Dr. Gold did not believe that Mr. Poddar required hospitalisation and arranged weekly outpatient psychotherapy at the University's student counselling centre with Dr. Moore, a psychologist. Mr. Poddar later indicated that he did not trust Dr. Moore and asked Dr. Gold if he could see him again, which Dr. Gold refused. During therapy with Dr. Moore Mr. Poddar reluctantly revealed his fantasies of harming Ms. Tarasoff and of his plans to kill her when she returned to school in September from vacation in Brazil. Dr. Moore told Mr. Poddar that he would have to take steps to prevent him from doing so if he continued to talk in this way. Mr. Poddar did not return for any further appointments.

After consultation with Dr. Gold, Dr. Moore notified the Campus Police by telephone and in writing that Mr. Poddar was dangerous and should be involuntarily committed for observation and treatment. The Campus Police went to Mr. Poddar's apartment, where he was living with Ms. Tarasoff's younger brother, interviewed him extensively in the brother's presence, and then left without detaining him, noting that he was "rational" and that he promised to stay away from Ms. Tarasoff.

When Ms. Tarasoff returned from her vacation she continued to see Mr. Poddar occasionally and his obsession intensified. A few weeks later, Mr. Poddar went to the Tarasoff home and shot and stabbed Tatiana to death. He then phoned the Berkeley city police and told them that he thought he had just killed someone.

Tatiana Tarasoff's parents initiated a civil action against Dr. Moore, the University and the Campus Police, claiming that her death was a result of their negligence. The Tarasoffs claimed that the Defendant therapists should have warned their daughter that Mr. Poddar presented a danger to her.

The Defence argued, among other things, that therapists are obligated to protect the confidentiality of their clients and that warnings would compromise the practice of
psychotherapy. The Court disagreed, holding that "the protective privilege [to not disclose confidences] ends where the public peril begins." The Court ruled that Dr. Moore had accurately determined that Ms. Tarasoff was in peril, so he was obligated to take some action to protect her. The Court determined that if the facts in the Tarasoff suit were as alleged by the Plaintiffs, then Dr. Moore had an obligation to protect Ms. Tarasoff, and her parents were allowed to file suit on those grounds, stating:

Where a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus, it may call for him to warn the intended victim or others likely to apprise the victim of danger, to notify the police or to take whatever steps are necessary under the circumstances.

The Court's opinion noted that the Plaintiffs would be hard-pressed to win such a suit as the therapists might in fact have done as much as could be legally required of them. As with 85 to 90 percent of professional liability claims, the case was settled out of court for what was rumoured to be a very small amount.

**Tarasoff in Canada**

In Canada, the Tarasoff principle has only been addressed directly in the single case of *Wenden v. Trikha* (1991) in which Mr. Trikha was placed under close supervision in a psychiatric ward under the care of a psychiatrist. Shortly after his admission he eloped from the hospital and was involved in a car accident in which Ms. Wenden was seriously injured. A civil action was commenced by Ms. Wenden against the hospital and the psychiatrist.

The Court held that when a psychiatrist becomes aware that a patient presents a serious danger to the physical well being of a third party or parties there arises a duty to take reasonable steps to protect such a person or persons provided they can be identified. In *Wenden* there was no identifiable victim, making the question of identifiability difficult. Ultimately, the Court held that the psychiatrist had not acted negligently in his care of Mr. Trikha and thereby the question was not addressed.

The Supreme Court of Canada in the decision of *Smith v. Jones* (1999) accepted the reasoning in *Wenden*, as well as the general principle of *Tarasoff* and provided more clarity around the issue of identifiability by noting that a duty may arise “if a class of victims, such as little girls under five living in a specific area, is clearly identified.” The court in *Smith v. Jones* also commented on the issue of the nature of the threat:

I believe it is more appropriate to speak of a person making known his or her intentions. While speech is perhaps the most common means of making intentions known, it is certainly not the only manner of indicating a
clear intention. It could be accomplished soundlessly yet with brutal clarity by thrusting a knife through a photograph of the intended victim.

It should be noted, however, that the Court was principally concerned in that case on the issue of privilege and thus this comment is likely an incidental opinion and therefore not binding, although almost certainly to be followed in any subsequent Canadian decision.

Efforts to protect third parties from a client’s violent behaviour may involve having to breach a confidential relationship. It is important to keep in mind that a violation of confidentiality should only be considered under circumstances of possible serious physical harm or death. In a Nova Scotia case (*R. v. R. (K.A.)*, 1993), involving a physician who violated the confidentiality of a patient he had reason to believe was lying in a criminal case, the physician was suspended for three months by the College of Physicians and Surgeons for inappropriately violating confidentiality.

**Avoiding Liability**

When a threat is of a serious nature and the circumstances are such that a reasonable psychologist would be concerned, then some duty to protect owed to the third party almost certainly arises under Canadian law (Truscott & Crook, 1993). These circumstances may arise in the context of therapy, assessment, or research. If, however, the risk is extremely low and the potential damage is slight, then the courts would likely not impose such a duty. The test, again, is based on the legal fiction of the reasonable psychologist: It is "justifiable not to take steps to eliminate a real risk if it is small and if the circumstances are such that a reasonable man [sic] ... would think it right to neglect it" (Chambers & Heuston, 1981).

As in all issues of avoiding liability, the psychologist's most powerful defence is careful documentation and consultation with qualified colleagues. Thorough records are critical to document that appropriate procedures were followed and reasonable steps were taken in light of the facts, and consultation provides evidence of professional consensus about the action taken. Liability is usually imposed for failing to follow appropriate procedures, especially in gathering or communicating information, not for errors in judgment in light of the known facts. The degree to which relevant information can be obtained will depend upon the circumstances of the case. If a client presents with problems related to angry or violent behaviour, a thorough assessment of violence-related factors should be undertaken at intake. If concerns arise unexpectedly in the course of providing services, every *reasonable* effort should be made to obtain the information needed.

If a psychologist is concerned about whether or not a client may act upon a threat to a third party, efforts should be made to obtain and take into account the following information: (a) the client's history of violence (especially noting any similarities to the current situation), (b) the client's relationship to the threatened person (less than a quarter of homicides in Canada involve strangers), (c) the client's opportunity to act on the threat (especially the availability of weapons and accessibility to the intended victim
as most homicides involve weapons and most occur in the home or other private place, 
(d) the factors that provoked the threat and whether they are likely to continue 
(especially alcohol abuse and relationship difficulties), and (e) the client's response to 
any treatment already provided.

If a consideration of these factors convinces the psychologist that the threat is genuine 
and that violence is imminent, the next step to take is to attempt to dissuade the client 
from the threatened violence by treating the violent behaviour as one would any 
therapeutic issue (Truscott & Evans, 2001). This step is very important. Once third 
parties become involved, particularly the police, further therapy is unlikely to be desired 
by the client. The best legal advice in these matters is to remember to think like a 
practitioner. If one is inexperienced or unskilled in such cases, consultation with a 
skilled colleague would be prudent.

Involving the client in as much of the process as possible is not only good psychological 
practice, but may also decrease the imminence of violence (Truscott, Evans, & Mansell, 
1995). The client may be enlisted, for example, to reduce the imminence of violence by 
removing weapons or alcohol from their home, and/or to warn the victim by phone or in 
writing, not in person.

If attempts to forestall the violent act are unsuccessful, the client should be informed of 
the limits of confidentiality and the steps which will be taken. Civil commitment 
proceedings should then be initiated—even if there is some doubt as to whether or not 
the client meets the appropriate criteria. Under this circumstance the psychologist would 
be responsible for following-up to ensure that the client had indeed been committed 
(Truscott & Goodkey, 2003).

If the client is not committed, or commitment procedures cannot be initiated quickly 
enough (e.g. the client leaves the office stating that they are about to carry out their 
threat), the psychologist should then not hesitate to warn the victim(s) or family and the 
police, even if there is fear of legal reprisal by the client. Ideally, permission will be 
obtained from the client to warn the intended victim(s), thereby circumventing any 
violation of confidentiality. When contact is made with others, only that information that 
is necessary to prevent the foreseen violent act should be divulged.

References

Chambers, R.S., & Heuston, R.F.V. (1981). *Sweet and Heuston on the law of torts* 


Tarasoff v. Regents of the University of California, (1976), 17 Cal.3d 425, 551 P.2d 334.


