

Professional Guidelines for Psychologists

Limits to Confidentiality and Consent for Services:

Special Issues in Working with Minors

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Special Issues in Working with Minors**

Preamble

These guidelines provide an overview of the legal and ethical issues that apply when a psychologist is working with a minor.

With some exceptions, the age of majority in Alberta is 18 years of age. Clients normally cannot provide written and informed consent for services until they are 18 or older. When a psychologist provides services to minors (persons under the age of 18), he or she must therefore address two important issues: limits to confidentiality and the minor's ability to consent to services.

It is important to consider that the term "guidelines" refers to statements that suggest or recommend specific professional behaviour, endeavours, or conduct for psychologists. Guidelines are intended to facilitate the continued systematic development of the profession and to help assure a high level of professional practice by psychologists. Guidelines are not intended to be mandatory or exhaustive, and may not be applicable to every professional and clinical situation. Rather, guidelines are a bridge between the aspirational intent of the Code of Ethics and the minimum requirements set by the Standards of Practice. They are not definitive and they are not intended to take precedence over the judgment of a psychologist. As legislation is subject to change, psychologists should endeavour to keep abreast of the relevant legislation referenced in this document.

DEFINING ROLES

I. A psychologist must inform a minor of possible limits to confidentiality.

A psychologist must inform minors that their parents or guardians may have the right of access to all information revealed during the provision of services. If this poses a problem for the minor, the psychologist has the option of implementing sections 21 and 22 of the Standards of Practice of the College of Alberta Psychologists (CAP), whereby an agreement is reached in advance with the minor and his or her parents that certain issues will not be disclosed to the parents or guardian.

If a psychologist is working in an agency that is subject to the *Freedom of Information and Protection of Privacy Act* (FOIPP), an exception may apply. If the head of the public body determines that disclosure of information to the parent would constitute an unreasonable invasion of the privacy of the minor, the information will remain confidential. For details, see section 79(1)(d) of the FOIPP Act.

Further, in some cases information may be shared with other members of a multidisciplinary team, and a discussion of this with the guardians and the child is important as well.

A further exception may apply to psychologists working in schools. Section 1(m) of the *School Act* defines an independent student as a student who is:

- (i) 18 years of age or older, or
- (ii) 16 years of age or older and:
 - (a) who is living independently, or
 - (b) who is a party to an agreement under section 57.2 of the *Child, Youth and Family Enhancement Act*.

When a client is defined as an independent student, the psychologist may generally not disclose information to a parent without the student's consent. However, exceptions to this may occur if the information is ordered for release by a court.

II. With the exception of emergency intervention, a psychologist must determine whether the minor is in a position to consent to services.

Parental written consent or that of the guardian is required and must be documented for the provision of psychological services to a minor. Normally, consent from only one of the parents is acceptable. However, when the parents are separated or divorced, a psychologist must inquire who has legal guardianship of the minor. In cases when a court order or a custody agreement stipulates that both parents must be involved in the decision making for a child, both parents must provide consent for services to the child. It is important to recognize the increasing complexity of family units and who may actually be the legal guardian of the child. Biological parents, adoptive parents, step-parents, divorced parents (biological or adoptive), former common-law parents (biological or adoptive), foster parents, or even a guardian appointed through an agreement, will, or by a court order, may be allowed to determine whether a child can receive services. When questions arise, it is advised that the psychologist actually ask to see the appropriate

orders or documents, or even seek legal opinion, in such cases prior to providing services in order to confirm who has the authority to provide consent for the child. Ideally, guardians will also inform each other regarding the fact that psychological services have been engaged.

SUMMARY CHART FOR DETERMINING WHO THE GUARDIAN OF A CHILD IS

STATUS OF ADULT	GUARDIANSHIP	FURTHER INQUIRY
Biological father and biological mother in intact Family	Guardianship	No; discretion as to which parent is the guardian.
Biological father and biological mother	Possible guardianship	Does any one of the categories in section 20 of the <i>Family Law Act</i> apply to the individual? Is there an agreement regarding guardianship?
Adoptive mother	Guardian by court order	Obtain copy of court order.
Adoptive father	Guardian by court order	Obtain copy of court order.
Divorced mother	Guardian, unless removed by court order	Joint custody or sole custody? If sole custody, does non-custodial parent have right of access?
Divorced father	Guardian, unless removed by court order	Joint custody or sole custody? If sole custody, does non-custodial parent have right of access?
Non-parent, including step-parent, foster	No rights of guardianship unless by court order,	Review copy of court order, will/grant of probate, or agreement/

STATUS OF ADULT	GUARDIANSHIP	FURTHER INQUIRY
parent, or Children's Services authority	appointment under will, agreement, or temporary appointment	appointment before treatment, if time and circumstances permit.

Occasions may arise when a minor cannot or does not want to obtain parental consent for services. Common law recognizes the principle of a mature minor and case law has established that mature minors can provide their own consent provided that they have sufficient understanding and cognitive skills to enable them to understand fully what is being proposed (*J.S.C. and C.H.C. v. Wren*, Alberta Court of Appeal). Although chronological age is only one of several factors to be considered, court precedent suggests a benchmark: a minor would likely not be considered a mature minor before the age of 15. Furthermore, child-welfare authorities consider 12 years of age sufficient for involvement of a child's opinion on decisions that affect that child such as custody or disclosure of information.

The Supreme Court of Canada has addressed the issue of mature minor in its decision in *A.C. v. Manitoba*, 2009. The Court set out (at paragraph 96 of the decision) a list of factors to consider when determining if a minor is a mature minor. The factors are:

- What is the nature, purpose and utility of the recommended medical treatment? What are the risks and benefits?
- Does the adolescent demonstrate the intellectual capacity and sophistication to understand the information relevant to making the decision and to appreciate the potential consequences?
- Is there reason to believe that the adolescent's views are stable and a true reflection of his or her core values and beliefs?
- What is the potential impact of the adolescent's lifestyle, family relationships and broader social affiliations on his or her ability to exercise independent judgment?
- Are there any existing emotional or psychiatric vulnerabilities?
- Does the adolescent's illness or condition have an impact on his or her decision-making ability?
- Is there any relevant information from adults who know the adolescent, like teachers or doctors?

This Court stated that the list is not intended to represent a formulaic approach. Its objective is to assist in assessing the extent to which a child's wishes reflect true, stable and independent choices.

The Court emphasized that the mature minor's decision should be a genuinely independent one, reflecting a real understanding and appreciation of the decision and its potential consequences. To assess independence, the child ought to have life or developmental experience which would allow the child to question his or her beliefs.

If the minor's capacity and his or her understanding of the treatment and/or service are sufficient to warrant his or her being treated as a mature minor, the role of the parent or guardian changes to one of advisor and supporter. The parent or guardian no longer has the automatic right of access to the mature minor's confidential information unless the mature minor provides written consent. In fact, in some cases, when the parent or guardian has insisted upon access to the minor's information, the onus has fallen upon the parent or guardian to prove that the child is not a mature minor and therefore incapable of providing consent. Where the mature minor refuses to release information to his or her parent or guardian, the prudent psychologist should err on the side of caution and uphold the duty of confidentiality owed to the mature minor, even where the parent or guardian is the one seeking the information, until the courts determine whether the parent or guardian can access the information.

In cases of intact marriages (or where there is joint guardianship) it is recognized that both parents (or guardians) may not necessarily always agree on the need for services. This places the clinician in a somewhat precarious position, and close consultation with one's own colleagues, ethics board, or legal counsel may be needed to clarify whether services can be provided.

Furthermore, the clinician may need to consider whether legislation such as the *Health Information Act* (HIA, for publicly funded agencies) or even the *Personal Information Protection Act* (PIPA, for private agencies) applies, as both the HIA and PIPA documents concern the protection and access to personal health information. Depending upon the setting where a psychologist practices, differing requirements and permissions for access, and release of information may apply.

It is acknowledged that situations regarding the consent of minors can become very complex. Thus, a psychologist should not provide services to a minor without the knowledge and consent of the guardian or parent unless:

- (a) the psychologist has first ascertained that the recipient of services can be defined as a mature minor and has obtained informed consent from that mature minor, or

- (b) the courts have ordered that psychological services be provided to a minor.

Two exceptions may apply to psychologists who work in schools:

- (a) In the case of the independent student as defined above, the student is the one who has authority to consent to services, and not the parent or guardian.
- (b) Guidance and counseling services provided in the schools are viewed as an integral component of the school program. Consequently, parental consent is not required for the provision of guidance and counseling services. However, informed consent is required for psycho-educational testing.

This document is scheduled for review by 2015. After this date, users are encouraged to contact the CAP Practice Advisory Committee to confirm that this document remains in effect.

REFERENCES

- College of Alberta Psychologists. (2005). *Standards of Practice*. Edmonton, Alberta: Author.
- Government of Alberta. (2000). *Child, Youth and Family Enhancement Act*. Chapter C-12 RSA 2000.
- Government of Alberta. (2003). *Family Law Act*. Chapter F-4.5 RSA 2003.
- Government of Alberta. (2000). *Freedom of Information and Protection of Privacy Act*. Chapter F-25 RSA 2000.
- Government of Alberta. (2000). *Health Information Act*. Chapter H-5 RSA 2000.
- Government of Alberta. (2003). *Personal Information Protection Act*. Chapter P-6.5 RSA 2003.
- Government of Alberta. (2000). *School Act*. Chapter S-3 RSA 2000.
- J.S.C. and C.H.C. v. Wren*, [1986] 76 A. R. 115.
- A.C. v. Manitoba (Director of Child and Family Services)* 2009 SCC 30