

Legislation and Court Decisions Naming Psychologists or Affecting Psychologists in Alberta

Alberta Legislation*

Name	Purpose	Comments
<i>Age of Majority Act</i>	Concerns the definition of “adult” and “minor” for legal purposes	Sec. 1 defines age of majority as 18.
<i>Child, Youth, and Family Enhancement Act</i>	Concerns the citizen’s duty to report suspected risk of or instances of child abuse or neglect to Alberta Family and Social Services (Child Welfare).	Sec. 4 defines mandatory reporting requirements, and the conditions for them.
<i>Dependent Adults Act (currently under review)</i>	Concerns appointment of a Guardian or Trustee for individuals who have lost the mental capacity to make reasonable decisions for themselves because of mental or physical disorder. Psychologists are named in the Act as one of the professions who may render an opinion about whether an individual is in need of guardianship or trusteeship.	Sec. 2 concerns a psychologist’s authority and responsibility in rendering an opinion about capacity. Sec. 10 concerns dimensions of a guardianship or compulsory care order.
<i>Freedom of Information and Protection of Privacy Act</i>	Concerns the protection of and access to private or confidential personal information about an individual in the custody of a public institution, such as a school board, municipality, hospital, or social service agency.	Act currently applies only to public sector agencies and institutions in the Province of Alberta.
<i>Health Information Act</i>	Concerns the protection of and access to private or confidential personal health information about an individual in the custody of a publicly-funded health care institution.	Act currently applies only to public sector healthcare agencies and institutions in the Province of Alberta.
<i>Personal Information Protection Act</i>	Concerns the protection of and access to all personal information about an individual in the custody of a private organization.	Amendment in June 2005 to include <i>health</i> information as well..
<i>Health Professions Act</i>	Umbrella professional legislation governing the admission to and practice of health professions (including Psychology) in Alberta	Planned Proclamation for Psychology in 2005. The Schedule of Restricted Activities referenced in the <i>Health Professions Act</i> appears in the <i>Government Organization Act</i> .
<i>Limitations Act</i>	Sets out the time limits within which an individual or group may bring a legal action against another to recover damages.	Psychologists must maintain records of minors to whom they have provided care for no less than two years after the individual becomes an adult. Psychologists must maintain records of persons who are under a disability for as long as that person is under that disability. The Act allows the normal limitation period to run against a minor under certain conditions.

<i>Mental Health Act</i>	Provides for apprehension and initial hospitalization of individuals who may be a danger to themselves or others, or unable to look after themselves because of mental disorder.	Sec. 2 governs Admission Certificates; Sec. 26 defines competence under the Act.
<i>Personal Directives Act (currently under review)</i>	Allows citizens to provide legally-binding instructions about personal matters that concern them or to authorize another person to make decisions about such matters on their behalf after they have become mentally incapacitated by illness. Psychologists are named in the Act as one of the professions who may render an opinion about whether an individual lacks capacity.	Sec. 9 describes the psychologist's role in determining capacity under this Act, as well as the record-keeping and notification requirements imposed by the Act.
<i>Powers of Attorney Act</i>	Provides for the appointment of an individual to act for a person's financial interests. Enduring power of attorney allows for the attorney to act for the individual after the person has lost mental capacity because of some physical or mental disorder.	Unlike the <i>Personal Directives Act</i> , this Act allows only "medical practitioners" to determine incapacity for bringing a Power of Attorney into effect.
<i>Protection for Persons in Care Act</i>	Concerns the citizen's duty to report suspected instances of abuse or neglect of persons in public institutions to the Alberta Department of Community Development.	Act only applies to persons in public facilities in Alberta. Sec. 2 concerns mandatory reporting requirements.
<i>Workers Compensation Act</i>	Provides for the operation of the Workers Compensation Board for injured workers, including the Board's right of access to confidential personal information about a worker who is receiving services from the Board	Sec. 31 gives the WCB access to all information relative to a claimant's disability or compensable condition.
<i>Youth Justice Act</i>	Concerns methods for dealing with children and adolescents charged with offenses under provincial law.	

*Available from the Queen's Printer:

11510 Kingsway Ave.
Edmonton

455 – 6th St. S.W.
Calgary

World Wide Web: <http://www.gov.ab.ca/qp>

Federal Legislation*

Name	Purpose	Comments
<i>Charter of Rights and Freedoms</i>	Concerns the identification of citizens' basic legal rights under Canadian federal law.	
<i>Criminal Code**</i>	Concerns arrest and judicial proceedings arising from criminal acts; including consideration of the role of expert witnesses in the criminal courts.	Sec. 672 concerns mental disorder and the offender, including issues of fitness to stand trial.
<i>Divorce Act</i>	Addresses issues of confidentiality, privilege, custody and access, and competency in divorce proceedings.	Section 10 applies to court-directed counseling or therapy undertaken to effect reconciliation between parties in a divorce action.
<i>Personal Information Protection and Electronic Documents Act</i>	Addresses rules governing the collection, use, disclosure of, and access to personal information in the private sector. Concerns protection of personal information in areas not covered by provincial legislation.	The Act applies to personal health information in areas where provincial law does not apply.
<i>Youth Criminal Justice Act</i>	Concerns methods for dealing with adolescents (ages 12-17) charged with offenses under the Criminal Code, including the role of experts in this process.	Sec. 34 concerns mental disorder, psychological assessment, and the young offender.

*Available at: <http://laws.justice.gc.ca/en/index.html>

**Also, in Canada Law Books, Inc. (1998). *Martin's Pocket Criminal Code: 1999*. Toronto: Author. (Chapters Bookstores, U. of A./U. of C. Bookstores)

Supreme Court of Canada Decisions***

Name	Purpose
<i>McInerney v. MacDonald</i> [1992] 2 S.C.R. 138	Concerns the Common Law right of a patient to have access to information about him/her in the custody of a health care provider.
<i>R. v. Mohan</i> [1994] 2 S.C.R. 9	Concerns the conditions under which an individual may be allowed to give expert evidence to the Courts. See also U.S. Supreme Court decision: <i>Daubert v. Merrell Dow Pharmaceuticals</i> (92-102), 509 U.S. 579 (1993).
<i>R. v. Mills</i> [1999] 3 S.C.R. 668.	The Supreme Court held that counselling records of rape victims could be protected from disclosure in criminal proceedings against their alleged assailants. These protections were created by Parliament's 1997 revisions to Sections 278.2 sqq of the <i>Criminal Code</i> (the "Rape Shield" law). These protections are not absolute, but make it very difficult for defendants to gain access to such records. The Court's decision addresses the issue of balancing Charter protection of the defendant's right to make a full answer and defence to criminal charge and of the right to privacy of victims of sexual assault. See also: <i>R. v. Darrach</i> [2000] S.C.J. No. 46 (October 12, 2000)
<i>Smith v. Jones</i> (1999) 1 S.C.R. 455	Affirms that public safety considerations may override solicitor-client privilege in the case of statements made by a client to a psychiatrist retained by his defense counsel. The Court allowed the psychiatrist's affidavit about the assessment findings to be made public. Discusses considerations regarding balance between privilege and public safety.

*** Available at <http://www.lexum.umontreal.ca/csc-scc/en/index.html>

Other Relevant Court Decisions

Name	Purpose
<i>J.S.C. v. Wren</i> * (Alberta Court of Appeal, Dec. 31, 1986)*	Addresses the issue of the "mature minor" and the capacity of a person under the age of 18 to consent to treatment. See <i>Age of Majority Act</i> .

**J.S.C. v. Wren*. [1987] 2 WWR, 669-672.

Other Relevant Professional Agreements

Name	Purpose
<i>Mutual Recognition Agreement</i> (2002)	An agreement among the Psychology Regulatory Boards in Canada that provides for "fast-track" registration in a new provincial/territorial jurisdiction in Canada by an individual already registered for the independent practice of Psychology in another jurisdiction in Canada.

Available at: <http://www.cpa.ca/documents/MRA.pdf>

Published Professional Codes/Guidelines/Standards****

Name	Purpose
<i>CAP Standards of Practice</i>	Defines specific required aspects of professional practice of Psychology in Alberta.
<i>Code of Ethics for Psychologists</i>	Concerns principles and decision-making strategies for addressing ethical dilemmas in psychological practice.
<i>Practice Guidelines for Child Custody Assessment</i>	Concerns principles and technical/procedural standards for conducting psychological evaluations for custody and access in divorce proceedings.
<i>Practice Guidelines for Addressing Recovered Memories</i>	Concerns principles and procedural standards for dealing with clients with possible recovered memories of trauma or abuse.
<i>Practice Guidelines on Release of Confidential Information</i>	Concerns principles and procedural standards for dealing with requests for release of confidential information about a person obtained in the context of a professional relationship.
<i>Practice Guidelines on Advertising and Other Public Statements</i>	Concerns principles and procedural standards for public representation of professional credentials and services by psychologists.
<i>Control of Psychological Tests by Psychologists</i>	Concerns principles and procedural standards for using and protecting psychological test instruments.
<i>Dual Roles: Guidelines for Conducting Assessments and Providing Therapy with the Same Client</i>	Concerns principles and procedural standards for working with clients as both assessor and therapist.
<i>Guidelines for Supervisors: Addressing Unacceptable Performance of Provisional Registered Psychologists</i>	Concerns principles and procedural standards for managing deficient performance by a provisional registered psychologist who is being supervised by a Registered Psychologist
<i>Limits to Confidentiality and Consent for Services : Special Issues in Working with Minors and Dependent Adults</i>	Concerns principles and procedural standards for managing issues of privacy, confidentiality and consent with minor clients and with adults who lack capacity.
<i>Non-Discriminatory Practice</i>	Concerns principles and procedural standards for working with clients from diverse backgrounds
<i>Release of Confidential Information: Special Issues in Client and Third Party Requests</i>	Concerns principles and procedural guidelines for managing requests for release of confidential information obtained in the course of a professional relationship with clients.
<i>Service Fees for the Provision of Copies</i>	Fee guidelines for release of file information maintained by a registered psychologist.

<i>of Client Files to Authorized Persons</i>	
<i>The Status of Codes of Ethics, Codes of Conduct and Guidelines in the Regulation of the Psychology Profession in Alberta</i>	Explanation of the legal, professional status of various standards, codes, and guidelines for psychologists in Alberta.

**** Available from the College of Alberta Psychologists (www.cap.ab.ca)

Glossary of Key Legal Concepts for Professional Practice in Psychology

Term	Definition
<i>Confidentiality</i>	The obligation of a professional to safeguard information a person has disclosed to him/her in a professional relationship.
<i>Expert Witness</i>	A witness in a court or other legal proceedings who may give opinion evidence on a matter before the court. (See <i>Regina v. Mohan</i> , SCC)
<i>Fact (Material) Witness</i>	A witness in a court or other legal proceedings who may only give fact evidence (what he/she directly saw, heard, or did) on a matter before the court.
<i>Incompetence</i>	Failure to meet an agreed-upon standard of professional behaviour in providing a psychological service because of lack of skill or knowledge.
<i>Malpractice</i>	Improper or negligent care in providing a professional service.
<i>Negligence</i>	Failure to provide the standard of care expected in rendering a professional service.
<i>Notice to Attend as a Witness</i>	A legal document that compels a witness to attend a civil court or other legal proceedings. May include a requirement for production of professional records.
<i>Privacy</i>	The right of an individual to safeguard access to or information about him/herself.
<i>Privilege</i>	A legal quality granted to certain relationships (for example, lawyer-client, husband-wife, priest-penitent) that prevents information exchanged in those relationships from being disclosed in court or other legal proceedings. Psychologist-client communications are <i>not</i> privileged in any Canadian jurisdiction.
<i>Subpoena</i>	A legal document that compels a witness to attend a criminal court or other legal proceedings. May include a requirement for production of professional records.
<i>Unprofessional Conduct</i>	Conduct in the course of professional practice that is detrimental to the public, harms the standing of the profession, or betrays a lack of knowledge, skill, or judgement in the practice of Psychology

The Legal and Regulatory Arena of Psychological Practice in Canada Resource Publications

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