

**LIMITS TO CONFIDENTIALITY AND CONSENT FOR SERVICES:
Working With Minors and Dependent Adults By Pierre Berube**

Do you know the appropriate protocols to follow when a minor or a dependant adult requests your services? This article provides an overview of the rather complex legal and ethical issues that apply in these cases.

MINORS

Since, in Alberta, the age of majority is 18 (with some exceptions), people normally cannot provide 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.

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

A psychologist must inform minors that their parents have the right of access to all information revealed during the provision of services.¹ If this poses a problem for the minor, the psychologist has the option of implementing section 19 of the CAP Code of Conduct, 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.

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 personal privacy of the minor, the information will remain confidential. For details, see section 79(1)(d) of the FOIPP Act.

A further exception may apply to psychologists working in schools.

Section 1(h) 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,
 - B) who is a party to an agreement under section 7(2) of the Child Welfare Act, or
 - C) on behalf of whom a social allowance is issued under section 9(1) of the Social Development Act.

¹ Case law (McInerney v. MacDonald) has established the client's right of access to his or her file information. This right applies to the parent of a minor. Section 23 of the CAP Code of Conduct identifies two exceptions to this rule: a) when there is a significant likelihood that disclosure of the information would cause a substantial adverse effect on the client's physical, mental or emotional health, or b) when there is a significant likelihood that disclosure of the information would cause harm to a third party.

When a client is defined as an independent student, the psychologist may not disclose information to a parent without the student's consent.

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

If the parents know the minor is receiving services and agree with that, there should be no difficulty in obtaining their written consent. Written consent from only one of the parents [a custodial parent] is acceptable.

If a minor cannot, or does not want to obtain parental consent for services, the matter becomes more complicated. Common law recognizes the principle of a mature minor. Also, case law has established that mature minors can provide their own consent providing that they have sufficient understanding and intelligence 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 or 16.

If the minor's capacity and his or her understanding of the treatment and/or service is sufficient to warrant being treated as a mature minor, the role of the parent changes to one of advisor and friend. The parent no longer has the right of access to the mature minor's confidential information unless the mature minor provides written consent.

A psychologist should not provide services to a minor without the parent's knowledge and consent, or against the wishes of a parent, unless the psychologist has first ascertained that the recipient of services can be defined as a mature minor.

Two exceptions may apply to psychologists who work in schools.

First, in the case of the "independent student" as defined above, the student, and not the parent, is the one who has authority to consent to services.

Second, by policy of Alberta Learning, guidance and counselling 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 counselling services. However, informed consent is required for psycho-educational testing.

DEPENDANT ADULTS

In matters of confidentiality and consent for treatment, dependant adults must be treated in a similar way to minors.

1. A psychologist must inform a dependant adult of possible limits to confidentiality.

Psychologists must inform dependent adults that, in addition to the usual limits to confidentiality, their guardian has the right of access to all information revealed during

the provision of services. If this poses a problem for the dependant adult, the psychologist has the option of implementing section 19 of the CAP Code of Conduct, whereby an agreement is reached in advance with the dependant adult and his or her guardian that certain issues will not be disclosed to the guardian.

2. With the exception of emergency intervention, a psychologist must obtain the consent of the dependant adult's guardian prior to providing services.

If a client may be incompetent but there is no guardianship order in place, the psychologists should supplement the client's consent with the consent of a next-of-kin. If the client and next-of-kin disagree about service provision, the psychologist must make a decision by working through the ethical decision-making model of the Canadian Code of Ethics for Psychologists.

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