

Consent of minors to counselling therapy and disclosure of their personal information

1. Two different forms of consent

Consent to *counselling* and consent to *the disclosure of personal information* are completely different types of consent. They should always be dealt with separately. If a counsellor wishes to use a “consent form” to document a client’s consent at the start of counselling, that form should focus *solely* on the client’s consent to *counselling*.

Although it is entirely appropriate to discuss the limits to confidentiality at the beginning of a counselling relationship, consent to *the disclosure of personal information* should be sought as and when the need to disclose arises. (When the counsellor is required by law to disclose client information, client consent to disclosure is not *required*; however it is still often good practice to inform the client about what must happen.)

It is also important to remember that consent to counselling is an ongoing *process* and *not a piece of paper*. Without going into undue formalities, it is best to revisit and renew consent as counselling progresses, and to pay particular attention to renewing consent whenever there is a major change in the way counsellor and client are working together. Do not assume that a client’s consent given six weeks earlier continues to apply today.

All of the above applies whether the client is a young person or an adult.

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Summarizing information set out in the legal commentary [*Consent to Counselling Therapy Services*](#) Bryce, G, July 26, 2013

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2. Two assumptions

This Summary rests on two assumptions:

1. The counsellor is providing services either in private practice or for a non-government agency, and—in consequence—the rules regarding the collection, use, and disclosure of a client’s personal information are governed by the *Personal Information Privacy Act (PIPA)*. (Government agencies are separately regulated under the *Freedom of Information and Protection of Privacy Act* and will not be considered in this Summary.)

2. The counsellor is not subject to a legal requirement to disclose personal information to some authorized third party even without their client’s consent. The requirement for such mandatory disclosure arises when, for example:

- A counsellor has a reason to believe that a child has been, or is likely to be, physically harmed, sexually abused or sexually exploited, or is otherwise in need of protection (see section 14 of the *Child, Family and Community Service Act (CFCSA)*).
- The client’s insurance provider requires limited disclosure of information in order to cover the costs of counselling.

3. The importance of being a mature minor

A *child* is someone under the age of 19 years. Under the *Infants Act* and the common law, a child with sufficient capacity to make their own decisions is empowered to give legally binding consent to clinical counselling without the need for additional consent from a parent or guardian. *Such a child is called a mature minor.*

The concept of the mature minor focuses on the *maturity* of a child rather than on a predetermined *chronological age*. The law recognizes that it is a particular child’s intellectual and emotional capabilities rather than their chronological age that are the critical factors in determining whether a child can give valid consent.

A child with sufficient capacity to make their own decisions is called a mature minor. The law recognizes that it is a particular child’s intellectual and emotional capabilities rather than their chronological age that are the critical factors in determining whether a child can give valid consent.



4. A child's consent to counselling

Before a counsellor can be confident that a mature minor has given consent to counselling, two steps must be taken.

Step 1 - Is the Child a Mature Minor?

To determine whether a child *is* a mature minor—and is therefore *able to consent* to their own counselling—the counsellor must determine whether the child's physical, mental, and emotional development gives the child:

- A sufficient appreciation of what the proposed counselling involves
- An understanding of the probable consequences, benefits, and risks involved
- An understanding of the probable consequences of refusing counselling

If the counsellor determines that a particular child meets these conditions, then the child is a mature minor. They may give independent consent or refusal to counselling.

If the counsellor determines that the particular child is *not* a mature minor, then the counsellor cannot rely on that child's consent or refusal. The counsellor must seek consent from a parent or parents, guardian or guardians.

Step 2 - Is the Service in the Child's Best Interests?

Before proceeding to counselling, the counsellor must also assess whether the proposed counselling is in the child's *best interests*, viewed from the *standpoint of the child*. Even when a parent or guardian is involved in giving consent, it remains the standpoint or view of the child, *not* the wishes of the parent or guardian, which determines whether or not the counselling is in the child's best interests. Therefore, in making this second determination, the counsellor must carefully consider the child's circumstances and needs.

In brief

The above steps can be summed up by asking:

- Does this child sufficiently understand the nature of the counselling he or she is agreeing to and have a reasonable grasp of its probable consequences?
- Is counselling in this child's best interests?

Keep a record

A counsellor should document how the two-step assessment was done and record the information they relied on when making their determination.

5. A child's consent to the disclosure of personal information



As stressed above, a counsellor should approach obtaining consent to the disclosure of personal information *entirely separately* from obtaining consent to counselling. The *time* to obtain consent to either is when the need arises. This applies equally whether the client is an adult or a child.

Step 1 - Is the Child a Mature Minor?

To obtain the consent of a mature minor to the disclosure of their personal information to some third party (even a parent or guardian), the counsellor *must first* determine that young person is a mature minor with the capacity to give this type of consent. A determination that a child is capable of consenting to *counselling* does not obviate the need to make a *separate* determination in respect of disclosing the child's personal information.

The assessment process involved will be similar to that for assessing a child's capacity to consent to counselling. This time, however, the first step will focus on whether the child understands the advantages and disadvantages of disclosing or not disclosing their personal information. If the child has such capacity, he or she is then a mature minor in respect of this decision. However, that does not end the assessment process.

Step Two - Is Disclosure in the Child's Best Interests?

The second step is to ascertain whether the proposed disclosure of the child's information is in this child's *best interests*.

Difficult for counsellors?

Assessing whether a child is a mature minor for the purposes of disclosing personal information can be difficult for a counsellor. Training and inclination encourage counsellors to "follow the client". However, because the client *is* a legal minor (under the age of 19), their counsellor is legally responsible for assessing the child's capacity to give such consent and for determining whether disclosure is in this mature minor's best interests.

Is the proposed disclosure of the child's information in the child's best interest?



5. A child's consent to the disclosure of personal information continued

Requirement and Protection

There are limits on a mature minor's ability to give or to refuse consent to the release of information, for example when that child may be in need of protection. A counsellor must bear in mind those circumstances where the law may require disclosure even though the mature minor would otherwise refuse.

In most situations, however, it would be a *breach of a mature minor's confidence* for their counsellor to share that child's clinical information with a third-party—including parents or guardians—unless permitted to do so by the client or explicitly required to do so by law.

Documentation

As with consent to *counselling*, a child's consent to the disclosure of personal information is a process not a piece of paper. However, given the unique challenges that can arise in relation to a child's decisions about the disclosure of their personal information, counsellors should, at a minimum, record in writing their assessment process, *the information they relied upon when making their determinations*, and the child's subsequent consent.

A counsellor may also want to obtain a mature minor's written consent on a signed document that is specific to the situation and outlines both *what* the child has agreed the counsellor may disclose and to *whom*. Even if a parent or guardian has been involved in the child's counselling, it is still prudent to ask a mature minor to sign a consent-to-disclosure document. Such written proof of the mature minor's consent should protect the counsellor against any subsequent complaint that the counsellor did not follow the PIPA rules.

In most situations, it would be a *breach of a mature minor's confidence* for their counsellor to share that child's clinical information with a third-party—including parents or guardians—unless permitted to do so by the client or explicitly required to do so by law.

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*Over several years, BCACC legal counsel **George Bryce** has produced articles for *Insights into Clinical Counselling and legal commentaries, covering B.C. law and its relation to or impact on clinical practice.**



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6. Involving parents and guardians

If a mature minor has sought out counselling without any involvement of a parent or guardian, then the situation is straightforward. So long as the counsellor determines that the child is a mature minor, he or she is then legally empowered to consent to counselling so long as it is in their best interest.

In turn, if the need arises to obtain consent to the disclosure of personal information, a mature minor is able to give (or withhold) that separate type of consent so long as disclosure would be in their best interest and is not otherwise required by law.

It is not uncommon, however, for a parent or guardian to be involved in their child's counselling. For example, a parent may seek out and pay for counselling for their child, and may even help the child to choose a suitable counsellor. In such situations, and if circumstances permit, it is best to involve the parent or guardian in ongoing consent to counselling and in decisions concerning the disclosure of the child's personal information.

However, it is not always necessary to do so.

If the parent or guardian is not available to give consent about the direction of counselling, the continuation of counselling, or the disclosure of the child's personal information, then—so long as the counsellor has determined that the child is a mature minor—that child is then able to make these decisions without parental involvement, and the counsellor can thus rely on that consent.

Furthermore, the wishes of the mature minor could take *precedence* over those of their parent or guardian, in particular where there is a conflict. For example, a mature minor may decide that there is information they do not want to share with a parent or guardian. In such situations, a counsellor must respect the mature minor's refusal to share his or her personal information with a parent or guardian, unless the law otherwise requires such disclosure.