

## OBJECTIVE

TO CLARIFY THE REGULATORY REQUIREMENTS OF COMMON COUNSELLING CONUNDRUMS

## RELEVANT STANDARD

### SoP B5. Informed Consent (Children)

"The parents and guardians of younger children have the legal authority to give consent on their behalf.

Counsellors understand that the parental or guardian right to consent on behalf of children diminishes commensurate with the child's growing capacity to provide informed consent."

### CoE & SoP B2. Children and Confidentiality

"Parents and guardians do not have an absolute right to know all the details of their child's counselling, but rather, each request should be evaluated on a 'need to know' basis.

As a child grows and matures, the parent's right to know will diminish and may even terminate when the child achieves the capacity and sufficient understanding to give informed consent."

## ISSUE

THERE HAS BEEN RECENT MEDIA INTEREST IN POLICY CHANGES BY SOME PROVINCIAL GOVERNMENTS THAT WILL NOW REQUIRE SCHOOLS TO OBTAIN PARENTAL CONSENT BEFORE ACCOMMODATING A STUDENT'S REQUEST TO BE REFERRED TO BY THEIR CHOSEN NAME AND PRONOUNS, IF THE STUDENTS IS UNDER 16.

IT SEEMS TIMELY IN THIS CONTEXT TO REVIEW NSCCT'S STANDARDS OF CONSENT WHEN PROVIDING SERVICES TO MINOR CLIENTS.

IT IS IMPORTANT TO NOTE THAT NOVA SCOTIA HAS NOT CHANGED ITS EDUCATIONAL POLICY IN THIS REGARD. SCHOOLS IN NS CURRENTLY FOLLOW "[GUIDELINES FOR SUPPORTING TRANSGENDER AND GENDER-NONCONFORMING STUDENTS](#)" (DE&ECD, 2014).

## EXPLANATION

In Nova Scotia there is no legally established age that a minor must reach before they are able to provide consent for treatment, assessment or release of information (including to parents).

There is no legislation that grants or denies any decision-making entitlement to minors. The common law doctrine of the "mature minor" therefore plays a significant role in determining a minors' entitlement to make mental health care decisions. It is the only means for minors in Nova Scotia to become entitled decision makers.

The mature minor doctrine supports the position that a minor who can understand and appreciate the nature and consequences of their decision and its alternatives is able to give a valid consent regardless of age.

While an age-based rule might be more administratively efficient and politically expedient than individualized assessments, such an approach has no basis in science or ethics.

***A counselling therapist must therefore determine on a case-by-case basis, whether a particular minor is capable of making decisions in their best interest.***

When assessing a minor client's capacity to make their own choices regarding their mental health, several factors need to be taken into careful consideration:

1. is the minor client capable of abstract reasoning?

The transition from concrete operational thinking to formal abstract thinking typically progresses along a continuum that begins around 11 years of age and is fully developed in most minors by age 14.

It is important for counselling therapists to remember that obtaining consent should never be your goal. *Your goal should be to create the conditions in which a client's authorization (or refusal) can be accepted as morally valid.*

It is imperative when working with minors that the basis upon which their capacity to consent was determined is carefully documented. Doing so will help justify your professional judgement if it is called into question.

Age	Grade 7		
0----->	12->	14---->	18/19
Presumption <i>against</i> capacity to consent	Grey Zone	Presumption <i>in favour</i> of capacity to consent	Legal age of majority

Requires thorough individualized capacity assessment

These broad presumptions about decisional capacity based on age can be a useful starting-point, but they must be empirically tested and verified for each client using a recognized method such as this example from Faden & Beauchamp (1995), covering the elements of a morally valid consent.

### Threshold Elements [preconditions]

- Competence (to understand and decide)
- Voluntariness (absence of coercion deciding)

### Informational Elements [provided by the RCT]

- Disclosure (of all relevant information)
- Recommendation (of a therapeutic plan)
- Understanding (of disclosed information and proposed plan)

### Consent Elements

- Decision (adequate time and reflection)
- Authorization/Rejection (of the plan)

2. in the present situation does the minor understand the nature and purpose of the therapeutic intervention proposed and the consequences of consent or refusal?
3. what is the client's level of psychological maturation? Consider factors such as emotional regulation, ability to self-reflect, willingness to learn from experience and to seek advice. Can they place age-specific values and peer influences in perspective?
4. what is the context in which the decision is being made? Consider the client's knowledge and experience relevant to the specific decision being made; their problem-solving skills; their affect as they consider the decision; and the social support network that is available to them.

## THE BOTTOM LINE

In Nova Scotia there is no set age a child must reach before they are able to provide consent for treatment, assessment or release of information (including to parents). A counselling therapist must therefore use their knowledge and skills on a *case-by-case* basis, to determine whether a particular minor is capable of making decisions in their best interest. In most cases, children with the capacity to provide a morally valid consent and to make personal decisions will have reached adolescence. **BROAD PRESUMPTIONS ABOUT DECISIONAL CAPACITY BASED ON AGE MUST BE EMPIRICALLY TESTED AND VERIFIED USING SCRUPULOUSLY APPLIED CAPACITY ASSESSMENTS AND CONSENT PROCESSES. In especially challenging cases, counselling therapists should seek consultation with an appropriately experienced colleague.**