

INFORMATION BULLETIN
March 2020

PROVIDING COORDINATED SERVICES TO MATURE MINORS

1. BACKGROUND: COORDINATION INITIATIVES & THE LAW ON MINORS

The Ending Violence Association of BC's Community Coordination for Women's Safety (CCWS) Program assists communities to increase safety from domestic and sexual violence by supporting and training cross sectoral coordination initiatives. "Coordination Initiatives" are cross-sectoral groups working at the local level to increase safety by ensuring that services, supports and responses are collaborative in nature. These coordination initiatives range from Violence Against Women in Relationships (VAWIR) committees, Violence Against Women Coordination committees, Sexual Assault Third Party Reporting (TPR) Protocols, Interagency Case Assessment Teams (ICATs) and other specialized partnerships between agencies.

When an adult is a victim of a sexual assault, they can access support from community based anti-violence programs. If they choose, they can report the sexual assault to police while remaining anonymous using the BC Third Party Reporting (TPR) protocol. When an adult is at risk of ongoing violence in a domestic or intimate relationship abuse setting, they may be referred to an Interagency Case Assessment Team (ICAT) - a partnership of local agencies, including police, child welfare, health, social service, victim support, and other organizations – which will assess and manage that risk.

When a minor (a person under 19 years old) is a survivor of ongoing, high risk domestic/intimate partner violence or sexual assault, a more complex analysis is required to ensure that the interventions are appropriate. A minor may not want their parents or guardians notified or given any case details. In these cases, a service provider at an anti-violence agency can respect the wishes of the minor if they can determine the minor is considered "mature" and are capable of independent decision-making in this type of situation.

A service provider must take steps to determine if a youth is a "mature minor": a person under the age of 19 years old ("minor") who is capable of making their own decisions without parental consent ("mature"). Minors will sometimes be referred to as "youth" or "children" in this bulletin as they are in the relevant case law and legislation.

While the BC TPR Protocol and the ICAT Best Practices are intentionally focused on adults aged 19 and over, referral to a coordination initiative might be suitable for younger survivors if they can be considered "mature minors". There is no fixed age to define a mature minor. In case law, the age considered by the courts has ranged from 11 to 17 years old. However, there is no fixed age in legislation and no set number in policy. Each situation involving a minor must be evaluated on a case by case basis to determine the youth's level of capacity in decision-making. We will provide here a variety of factors to use in assessing capacity.

The general law of consent to make decisions related to accessing public health services, treatment or to receive response services related to violence is encoded in the *B.C. Health Care*

Consent Act. The *Act* addresses adult consent related to health services and presumes that adults are capable of making their own decisions unless it is proven otherwise. In contrast, minors are presumed to be unable to make their own decisions in the law and are presumed to require parental consent to treatment or health services. However, the standard to meet to rebut that presumption has lessened in recent years: there has been a shift in law and policy to ensure that young voices are not lost when decisions are being made about them. British Columbia's *Infants Act*ⁱⁱ allows youth to have a voice in decisions about them. Canada is a signatory to The United Nations Convention on the Rights of the Child (UNCRC)ⁱⁱⁱ. This international treaty sets out the human rights of children and provides a variety of guidelines with respect to the protection and rights of children and youth. The "best interest of the child" has become the primary consideration in most matters involving minors.

Federal legislation enacted in 2019 in Canada, *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*^{iv} also lists the best interests of the child as a national guiding principle. The Act lists nine factors to be considered when determining the best interests of the child including, "the importance to the child of an ongoing, positive relationship with his or her family, community and the Indigenous group to which he or she belongs; the importance of stability for the child; connection to the child's language and territory".

The Supreme Court of Canada has stated that, when a minor is "capable of understanding what is proposed and of expressing his or her own wishes" with respect to treatment, parental rights yield "to the children's right to make his or her own decisions"^v. The case law cautions not to set a higher threshold capacity test than would be expected of an adult in similar circumstances and not to substitute your own opinion for that of the minors' opinion.

Given the obligations under law with respect to protecting minors and the rights of minors, even if an agency support worker determines that a child does not have sufficient capacity to make their own decision about treatment or coordinative service provision, that agency should still take a minor's view into consideration and advocate for those views

2. STEPS IN PROVIDING COORDINATION INITIATIVES TO MINORS

First Step: Protection of a Minor

In BC, the laws that govern children's rights and protections include the Child, Family and Community Service Act (CFCSA)^{vi} and the *Infants Act*^{vii}. Under section 14 of the CFCSA, any adult providing services to minors must also satisfy themselves that there are no child protection concerns which would require a report to the Ministry of Children and Family Development.

When meeting with a youth, an agency should make it clear that they will not discuss their personal information with parents or guardians without the minor's express consent. The agency should also make it clear to the minor that there are a variety of applicable legislated exceptions to confidentiality such as: if there is an imminent risk^{viii} to themselves or others (particularly other children); if the state is their guardian under section 70 of the CFCSA and requests information from a public body; or if the "child is in need or protection" under section 13 of the CFCSA. Section 13 provides a child needs protection where a child has been or is likely to be sexually abused or exploited by the child's parent; physically harmed, sexually abused or sexually exploited by another person and the child's parent is unwilling or unable to protect the child.

An agency should always document their decisions when disclosing confidential information. This record should include whether: the minor was informed of the need to disclose; the minor gave consent to the disclosure when informed; and the specifics of what was disclosed and to whom. It is also important to date this kind of documentation. When a minor is a victim of sexual assault/abuse, domestic violence or other gender-based violence, a referral agency must also consider their own internal policies concerning clients under 19, their internal reporting procedures and any other relevant protocols. If the agency worker is a clinical counselor, social worker, nurse or another registered professional, we suggest they consult their professional ethics and policies for working with minors.

If it is determined that a child is not in need of protection, an agency must further consider whether this minor has the capacity to make a decision in the immediate circumstances.

Second Step: The Standard for a Minor to Meet

In the course of providing support, information, and assessing any risk to a child's safety, the agency will also be assessing the child's maturity. Considering a referral to coordinated services (TPR, ICAT or other established protocols) for minors requires consideration of that minor's maturity – the capacity to make their own decisions. Within section 17(1)(2)(3) of the Infants Act, as well as other Canadian legislation and case law, a service provider must be satisfied that a minor understands the consequences, both positive or negative, in agreeing to medical treatment or services.

The process for an anti-violence agency in determining a minor's maturity can be equated to the process used by clinical counselors. The guideline provided by the Association of Clinical Counselors describes the essential elements for valid minor consent as they would apply to counseling therapy^{ix}. They are:

that the services must be in the best interests of the minor; that the minor must be capable to give or refuse consent; that their consent must relate directly to the proposed services; that they must be given any information that a reasonable person would require to understand the services and make a decision and an opportunity to ask and receive answers to any questions they have.

Just as an agency would document the information gathered relating to any risk to the minor, they would also make notes to show how they determined that the minor was capable of making their own decision about a coordinated service. The following list is intended to encourage development of your own questions and considerations when meeting with a minor who has survived violence and how they could be best supported through a coordination initiative. Some evaluations to make and note, while keeping in mind the necessity of a trauma informed approach in meeting with a youth survivor, are:

- How did the minor behave?
- Was the minor able to adequately tell their story?
- Did the minor ask questions about the process?
- Does the minor understand the nature of their situation?
- Does the minor understand other points of view or possible decisions/outcomes?
- Can the minor can/cannot provide some details or points to justify their decision?
- Was the minor able to express consequences of their decision (and discuss how to address those consequences?)

If the minor does not seem to understand the nature of their situation, perhaps the agency worker needs to take further steps, or spend more time before making the determination.

It is important to reiterate that the agency must document how they made their determination about whether your client is a mature minor, including whether the youth reasonably understood the benefits and risks of seeking help/disclosing this offence and the limits on confidentiality of their personal information. The agency must ensure the minor understands the services offered and the decisions to make. The information required will be case specific and will involve risk, benefits and supports available to the minor. "Reasonably understood" means that the youth understands in a basic, straightforward way – a good test if it the youth can state the possible consequences of their decision in a plain, basic language.

While the law states that a minor should reasonably understand the benefits and risks and possible outcomes of treatment or services, a minor does not need to have that knowledge when they arrive at your agency. An agency worker or an appropriate resource person should assist the minor and ensure the minor has the requisite information to make an informed decision and to understand the relevant factors in their decision-making. An agency will likely be able to provide more than one alternative and explore those options with the minor.

An agency should also ensure that the minor's view is not dismissed because it does not accord with the view of the worker or the agency. The courts have cautioned that disagreeing with the opinion of a minor does not necessarily allow you to determine that they are not mature enough to make that decision. If the minor's view differs from that of the service provider, an effort should be made to understand the minor's reasoning. The minor's reasoning is not necessarily incorrect or irrational. The minor may have made certain assumptions based on poor information, mistrust or fear. In attempting to understand the rationale for their decision or when determining whether the youth understands the nature of their situation, it may take extra time.

A youth may be mistrustful, fearful or otherwise unable to listen well at this time as a result of trauma or due to distrust of authority. It may not be possible to alleviate the mistrust or fear that a minor has developed over time but it may be possible to understand how those emotions are affecting decision making. It may, however be possible to address the youth's concerns, provide more information or better understand their circumstances. Anti-violence workers often face situations where survivors refuse treatment or refuse to seek charges against an abuser. When the victim is a mature minor, the service worker must remember that this decision may still have been reached rationally. At minimum, further understanding of the minor's circumstances can allow for more targeted and appropriate supports.

Third Step: The Maturity of a Minor

There is not and should not be a universal test for capacity. In each case, it is necessary to identify the context of a minor's decision-making. When the issue of a minor's capacity arises, the question to ask is, "capacity to do what?" The answer determines the capacity the youth should have. The context of each youth's situation will be different and demand varying degrees of capacity. Therefore, it is important for an agency to determine the context to ensure the minor has the capacity required in any given situation.

Once it is determined that no child protection issues are present, the specific circumstances of the minor can be taken into consideration in order to determine whether the provision of a coordinated service (ICAT, TPR or other service) is appropriate. The minor's age will still be a

consideration. If the youth is very close in age to adulthood (18), for example, and it has been determined that the youth has sufficient capacity for independent decision making, their decision to report an assault through Third Party Reporting may not require additional steps with respect to capacity. The agency may move on towards the TPR process itself. Alternatively, if the minor is 15 and has a reasonable grasp of the consequences of their decision, there still might be other factor that require further consideration before referring the 15 year old to an ICAT team. After evaluating the capacity of the youth before them, the agency must consult the appropriate protocol or guidebook in order to ensure that the minor understands the process and is properly directed.

In addition to the items mentioned above, it is important to note the minor's consent must be given voluntarily and that the minor's consent cannot be obtained by fraud or misrepresentation. A minor cannot be pressured or intimidated to choose a particular course of action. If a service provider or other adult were to intentionally and knowingly provide incomplete information to inform the minor's decision or if the adult were to intentionally give the false information, this would violate the case law, legislation and the rights afforded to minors in Canada.

FOR COORDINATED SERVICES TO MATURE MINORS, REMEMBER:

- Act in the best interests of the minor: consider their rights, protections and consider any reporting requirements
 - Refer to the *Child, Family and Community Service Act, Infants Act, Health Care Consent Act*, and case law, agency policies
- No universal test: Evaluation of capacity must be done on a case-by-case basis
 - Is the minor capable of understanding the nature of the services proposed?
 - Does the minor understand the reasonably foreseeable consequences of their decisions?
 - Does the minor have all the relevant information to make a decision?
- Always Document
 - Consent to disclose information (including to Coordination Initiatives)
 - Decisions to disclose information without consent, including reports to MCFD
 - Disclosures to third parties & notification to minor
 - Decisions regarding capacity to consent/maturity
- Refer to the appropriate coordinated services protocol: TPR Guidebook or ICAT Best Practices Manual or Community Protocols

Further information, consultation and support regarding Mature Minors and related topics is available from Community Coordination for Women's Safety. Contact information can be found at endingviolence.org

END NOTES

- i *Health Care Consent Act*, 1996, SO 1996, c 2, Sch A, <<http://canlii.ca/t/5354b>>
- ii *Infants Act* [RSBC 1996] c. 223 <<https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-46/latest/rsbc-1996-c-46.html>>
- iii UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>
- iv *An Act respecting First Nations, Inuit and Métis children, youth and families* (S.C. 2019, c. 24)
- v *Gillick v West Norfolk and Wisbech Area Health Authority*, [1985] (1985) 3 All ER 403
- vi *Child, Family and Community Service Act*, RSBC 1996, c 46, <<http://canlii.ca/t/53klj>>
- vii *Infants Act* [RSBC 1996] c. 223 <<https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-46/latest/rsbc-1996-c-46.html>>
- viii Imminent Risk (or Threat) refers to harm that is about to happen. Harm means a serious, substantial threat to health or life including injury or illness. Most professionals are permitted to disclose information (without consent) when there is an imminent risk of harm to a person or group or to the public. Some are required to disclose when there is an imminent risk.
- ix What counsellors need to know about the law of consent before they provide counselling therapy services to their clients. Prepared by George K. Bryce, BCACC Legal Counsel July 26, 2013