Ontario College of
Social Workers and
Social Service Workers

Practice Guidelines for Consent and Confidentiality with Children and Youth

Guidelines for Registrants of the
Ontario College of Social Workers and
Social Service Workers

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[1] Kate Dewhirst Health Law is a team of health lawyers dedicated to improving the healthcare system. They work with a wide range of clients, including Ontario Health Teams, hospitals, family health teams, mental health centres, nurse practitioner-led clinics, community health centres, birth centres, healthcare organizations, and regulatory bodies. The Ontario College of Social Workers and Social Service Workers consulted with Kate Dewhirst Health Law to develop the *Practice Guidelines for Consent and Confidentiality with Children and Youth* and funded this project.

Preamble

The *Practice Guidelines for Consent and Confidentiality with Children and Youth* (the Guidelines) were developed for College registrants who work with clients under the age of 18.

These Guidelines supersede the *Practice Guidelines for Consent and Confidentiality with Children and Youth, 2009*.

These Guidelines are designed to assist College registrants in understanding the expectations of the College and interpreting and applying the College's standards but are not themselves standards of practice and are not enacted by regulation or bylaw.

The Professional Misconduct Regulation (O. Reg. 384/00) and the *Code of Ethics and Standards of Practice* (2023), as amended, prevail over these Guidelines; however, these Guidelines may still be used by the College (or others) to assist in determining whether College registrants have maintained appropriate standards of practice and professional conduct in a particular case. It is important that registrants be familiar with both these Guidelines and the *Code of Ethics and Standards of Practice* (2023), as amended.

College registrants are expected to also review and understand the relevant legal requirements and organizational policies, to comply with their professional and statutory obligations and to obtain legal advice as needed.

These Guidelines are not meant to be prescriptive as each client and professional relationship is unique.

Introduction

Social workers and social service workers who work with clients under the age of 18 face legal, ethical and professional dilemmas that are different than working with adults.

Many pieces of legislation are relevant when working with children and youth[1]. While most of these laws create similar rules of consent, capacity, privacy and risk management for adults, the nature of the issues can be more complex when working with children and youth clients.

College registrants need to activate their knowledge, skills and judgment when faced with issues such as:

- Children who do not want their parents involved in their service
- Parents who disagree whether their children should receive service
- Requests for copies of records from parents, schools, authorities
- Believing a child is at high risk of self-harm or harm to others
- Reporting a child in need of protection
- Receiving a subpoena to share records for a youth client
- Advocating for a youth client to receive services on their own consent
- Providing services to children in the care and custody of a children's aid society or an Indigenous child and family wellbeing agency

These Guidelines identify common scenarios and key challenges when registrants work with children and youth. These Guidelines also identify the laws, ethical principles, questions and resources for registrants to consider when responding to those scenarios and challenges.

When presented with difficult situations, registrants are reminded that they should consider seeking legal advice, and can seek support and guidance from their supervisors or colleagues if they work in an organization, and from the College's Professional Practice Department through no-name, non-identifying consultations.

Guiding Principles and Values of the Profession

3.1 COLLEGE STANDARDS

College registrants who work with children and youth should be familiar with the College's *Code of Ethics and Standards of Practice* (2023), as amended. Relevant excerpts of the Code are included in Appendix A.

Under the *Code of Ethics and Standards of Practice*, College registrants must, regardless of client age:

- Obtain **informed consent** from clients before providing social work or social service work services
- Strive to enhance the **capacity** of clients to address their own needs
- Maintain the **best interest** of clients as a primary professional obligation
- Show respect for the **intrinsic worth** of the clients they serve
- Maintain **confidentiality** in all client interactions and anticipate circumstances in which there may be limits to confidentiality and discuss these limits with clients
- Obtain **consent to the collection, use or disclosure of client information**, unless otherwise permitted or required by law
- Take an **anti-racist and anti-oppressive stance** in their work, and commit to fostering equity, diversity and inclusion and belonging in all aspects of their practice

3.2 EMPLOYER POLICIES AND PRINCIPLES

College registrants who work for organizations should review and consider organizational policies and sector-specific rules (such as for children's aid societies, Indigenous child and family well-being agencies, school boards and psychiatric facilities).

Where there is a conflict between employer and College expectations, College standards prevail and registrants should advocate for changes to be made to those employer policies.

3.3 KATELYNN'S PRINCIPLE

Katelynn Sampson died at the age of seven while under the care of her legal guardians. Those guardians were later convicted of her murder.

Findings from an inquest into her death indicated that Katelynn was never interviewed privately during any child protection service intervention or throughout her involvement with family court. Additionally, documentation failed to include reference to Katelynn's African Canadian heritage, suggesting it was not considered during assessment or service provision.

To honour Katelynn, whose voice went unheard during her lifetime, the first recommendation from the inquest's jury was named Katelynn's Principle. This Principle provides for the importance of registrants centering their child and youth clients, especially those in the child welfare, justice and education systems, when considering capacity, consent and confidentiality.

Katelynn's Principle states:

- The child must be at the centre, where they are the subject of or receiving services through the child welfare, justice and education systems.
- A child is an individual with rights who must always be seen, whose voice must be heard and who must be listened to and respected.
- A child's cultural heritage must be taken into consideration and respected, particularly in blended families.
- Actions must be taken to ensure a child who is capable of forming their own views is able to express those views freely and safely about matters affecting them.
- A child's view must be given due weight in accordance with the age and maturity of the child.
- A child should be at the forefront of all service-related decision-making.
- According to their age or maturity, each child should be given the opportunity to participate directly or through a support person or representative before any decisions affecting them are made.
- According to their age or maturity, each child should be engaged through an honest and respectful dialogue about how and why decisions were or will be made.
- Everyone who provides services to children or services that affect children are child advocates. Advocacy may potentially be a child's lifeline. It must occur from the point of first contact and on a continual/continuous basis thereafter.

Legal Definitions

4.1 AGE OF MAJORITY AND THE MEANING OF CHILDREN AND YOUTH

In Ontario, a person becomes an adult at age 18 under the *Age of Majority and Accountability Act*. In law, people under the age of 18 may be described as "minors". Other Canadian provinces use the language of "minors" for children and "mature minors" for children who can make their own decisions. In Ontario, most laws refer to "children" or "young people" instead of "minors".

For example, *Ontario's Child, Youth and Family Services Act*, 2017 (CYFSA) defines a "child" to mean a person younger than 18 and states that a "young person" in the context of criminal law is a person who is or appears to be 12 years old or older, but younger than 18 years old.

As another example, Canada's *Youth Criminal Justice Act* defines a "child" as a person who is or appears to be less than 12 years old and a "young person" as a person who is or appears to be 12 years old or older, but less than 18 years old.

For purposes of these Guidelines, "children" are individuals under the age of 18 and "youth" are a subcategory of children between the ages of 12 – 18.

4.2 PARENTS, KINSHIP, CUSTOMARY CARE

Under *Ontario's Children's Law Reform Act* (CLRA), a person is the "child" of their parents.[2] That law further explains the rules of parentage in the cases of birth parents, adoption, assisted reproduction, surrogacy and other contexts. There can be up to four recognized parents for a child.[3]

Under the CYFSA, a reference in that Act to a "parent" of a child is a reference to either the person who has lawful custody of the child, or if more than one person has lawful custody of the child, all of the persons who have lawful custody of the child, excluding any person who is unavailable or unable to act, as the context requires.

Ontario's CYFSA explains circumstances when children's aid societies or Indigenous child and family well-being agencies are involved with children and when parental rights are curtailed. That Act introduces the concepts of extended family (kinship) care and customary care. Extended family care (kinship care) involves placement of children with siblings, extended family or community members. Customary care is defined as the "care and supervision of a First Nations, Inuk or Métis child by a person who is not the child's parent, according to the custom of the child's band or First Nations, Inuit or Métis community."

4.3 CAPACITY AND CONSENT

"Capacity" refers to an individual's cognitive abilities and mental processes. Capacity is defined in Ontario law as the ability to both understand the information relevant to a decision and the ability to appreciate the reasonably foreseeable consequences of the decision.[4]

"Consent" is a legal requirement for permission to be given for something to happen or an agreement to the doing of something. In these Guidelines, we focus on consent for treatment, service and information privacy decisions.

"Assent" is agreement or approval given by someone who lacks decision-making capacity or given by someone with decision-making capacity in circumstances where consent is not a legal requirement.

"Substitute Decision-Maker" or "SDM" is a legal term for an individual who makes decisions on behalf of an individual who is incapable to make decisions.

Decision-Making Process for Children and Youth Clients

When working with children and youth clients, College registrants should approach client decision-making in a four-step process:

1. Does the interaction or service require consent?[5]
    a. If yes, consent must be obtained before action is taken.
    b. If no, explain what is happening or provide a notice or other explanation to the client and possibly their support people, if appropriate, and seek the client's assent to participate in the interaction or service.
2. If the interaction or service requires consent, can the child make their own decision? Or does the child not have capacity to do so? (Is the child able to understand the nature, risks and benefits of the proposed interaction or service, and able to appreciate the reasonably foreseeable consequences of consenting or refusing consent?).
    a. If the child can make their own decisions, does the child want their parents or support people to be involved? If so, how does the child want them involved? Respecting the child's wishes, how can parents or support people be kept engaged or apprised of what is being proposed and what is happening?

   b. If the child cannot make their own decisions, who is the substitute decision-maker? And how can the child be kept engaged or apprised of what is being proposed and what is happening and provide input into decision-making?

3. Does the child or youth give informed consent? (Have the nature, risks and benefits of the proposed interaction or service and its alternatives been explained? Have the client's questions been answered? Has the client ultimately agreed to the service?).
   a. If yes, document the consent
   b. If no, document the decline
4. Are there any limits to the consent or legal overrides to the decision-making that need to be addressed?

STEP 1: INTERACTIONS THAT REQUIRE CONSENT

College registrants seek consent for:

- Treatment, counselling and care under the common law – for example, individual, family or group counselling; psychosocial interventions; assessments; and treatment and prevention of psychosocial disorders, disabilities or impairments (including but not limited to emotional and mental disorders).
- Treatment, counselling and care under the direct supervision/delegation of a registrant of a College under the *Regulated Health Professions Act*, 1991 (RHPA) under the *Health Care Consent Act*, 1996 (HCCA) – such as physicians, psychologists or registered psychotherapists.
- Service under the CYFSA – for example, service could include mental health services, counselling (individual, family, group), live-in treatment programs, services for support or prevention, services or programs for youth in criminal justice and services for children with developmental or physical disabilities.
- Information privacy decisions under the:
  - *Personal Health Information Protection Act*, 2004 (PHIPA) for College registrants working in health sector environments such as hospitals, family health teams, mental health agencies and psychiatric facilities, acting in the role of a Health Information Custodian in non-health sector environments, such as in correctional faculties and school boards or in private practice providing counselling;
  - Information privacy decisions under Part X of the CYFSA for College registrants working in child welfare, Indigenous child and family well-being, group homes and other children's service environments;

  - *Freedom of Information and Protection of Privacy Act* (FIPPA) and *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) for College registrants working in the Ontario government, municipalities, school boards, public health units, hospitals, colleges and universities among others;
  - *Personal Information Protection and Electronic Documents Act* (PIPEDA)[7] for College registrants working in private for-profit agencies; and
  - Canada's *Privacy Act* for registrants working for the federal government.

Information privacy decisions could include the collection, use and disclosure of personal information or personal health information, decisions about communicating by email, virtual care, taking photographs or making recordings and rights of access to records and rights to ask for corrections to be made to records, subject to exceptions.

The laws that create the requirements for consent to be obtained (both common law principles and statutes) also establish exceptions to requiring consent, for example, in the case of an emergency[8] or where safety overrides privacy[9] or for making a report of a child in need of protection to a children's aid society or Indigenous child and family well-being agency.[10]

College registrants involved in research projects involving children's data may have to follow additional laws[11] and ethical principles.[12] There are also Indigenous data sovereignty and data governance principles to protect a collective interest in data (even if it is de-identified), because of the profound impacts on communities and the rights of Indigenous people to self-determination in research, such as:

- First Nations Principles of OCAP
- Métis Governance Practices and Principles of ethical Métis Research
- National Inuit Strategy on Research

In general, College registrants **do not** require consent under any statute if engaged in the following kinds of activities with children or youth:

- skills development programming
- general education or presentations
- supervising peer support activities

Registrants must stay alert if organizational policies require registrants to seek consent even in cases when the law does not require it. And even if law or policy does not require consent, registrants should explain to clients, and their support people if appropriate, the proposed interaction or service, either in a conversation or through written materials, and seek the client's assent to participate in the interaction or service. See Step 3 below.

STEP 2: ASSESSING CAPACITY IN CHILDREN AND YOUTH

There is no specific age at which a child automatically starts to make their own treatment, counselling, care, service and information privacy decisions. [13] Just like adults, children may make their own decisions if they are capable. Registrants are entitled to rely on a presumption that an individual, including a child, is capable, unless it is unreasonable to do so.[14]

Capacity is decision-specific. An individual may be able to make some decisions but not all decisions.

College registrants must use their professional judgment to determine whether an individual has the ability to make their own decisions, or if they need a substitute decision-maker to do so. [14] It is the responsibility of registrants to assess the decision-making capacity of child and youth clients on an individual basis. This includes considering each child's unique needs and personal circumstances and not relying only on chronological age to determine capacity.

Test for capacity

The two-part test for a child to be capable to make their own decisions is:

- the ability to understand the information about the decision to be made; and
- the ability to appreciate the foreseeable consequences of saying yes or no to the decision to be made.[15]

Age is not determinative – but it is not irrelevant

While age is not a determinative factor in capacity of children and youth to make their own decisions, it is a factor. Babies, toddlers and very young children are never capable to make decisions. But as they age and mature, children will usually start to be able to decide whether they want to participate in counselling or receive other types of social work or social service work services. Capacity generally increases with age for children.

However, some children may never reach the capacity to make these decisions due to factors such as injuries, cognitive abilities, illnesses, developmental delays or conditions that permanently affect their ability to understand information or reason.

Fluid capacity

Capacity can be fluid and can increase or decrease over time.

For children and youth, often capacity to make decisions will increase over time and as a child matures.

However, injuries or trauma can lead to reduced capabilities or a decline in skills either temporarily or permanently. Children and youth who are capable of decision-making could be determined to be incapable following a significant event. Registrants should document any such changes.

Risk factors

A child or youth client may be capable of providing consent for some decisions but not for others.

College registrants play a key role in assessing client capacity in context for each specific decision. This involves applying a comprehensive understanding of the individual, their environment and the specific situation. Using their professional judgment, registrants must determine the suitable capacity threshold by considering the level of risk associated with the proposed intervention. For example:

- A lower threshold of decision-making capacity is sufficient for interventions or information sharing that is easily understood, carry minimal risk (in either the case of accepting or declining the service) and are likely to improve circumstances.
- A higher level of capacity is needed for decisions involving significant risks. High-risk interventions, such as entering residential treatment or sharing information with police or courts, have broader implications that some child/youth clients may not fully understand and appreciate compared to lower-risk scenarios.

This may result in different professionals involved in a client's care coming to different conclusions about whether a child is able to make their own decisions in different contexts, because the professionals are assessing capacity in relation to different decisions. Children may be capable to participate in counselling on their own while they may still need parental decision-making for surgical procedures or high-risk medication.

Registrants should respect and facilitate self-determination and help to maximize a client's involvement in their own choices. Wherever possible, registrants should identify whether there are any decisions that a child can make even if they are incapable for other decisions.

Timing for capacity assessments

College registrants first assess capacity at the onset of services. When the initial relationship is established, registrants determine whether they can presume capacity or need to assess further.

Registrants should informally assess clients regularly to ensure they understand the treatment, counselling or care that they are receiving and options with respect to accessing services and/or sharing information.

Registrants should more formally consider and document their assessment of capacity during the relationship where:

- The client had originally been incapable to make their own decisions, but is maturing, developing or returning to capacity.

- The client experiences a new trauma, injury or life event that has changed their cognitive, emotional or physical health.
- The client seems confused or does not seem to understand what is happening.
- The interactions, treatment, services or information privacy decisions have changed and become more complex or simplified.
- There is a request from the client, parents, courts or others for an assessment.

Factors that are not relevant to capacity

Registrants may encounter challenges when seeking consent that are not indicative of incapacity on the part of the client; for example, it is not incapacity if a client:

- Has parents who are in a custody dispute.
- Is quiet or shy.
- Needs extra time to decide.
- Does not speak the College registrant's language(s).
- Needs an accommodation or assistance to communicate due to a visual, hearing or speech impediment.
- Has a religious or cultural barrier to participating in the decision (for example with a registrant of the opposite sex).
- Does not understand because the registrant did not explain the situation and options well.
- Would like to consult with others first.
- Makes a decision that a registrant does not agree with or cannot rationalize – although this may be a legitimate flag to assess capacity.

Registrants should be alert to these challenges and facilitate support for clients to maximize their ability to make their own decisions.

Sample capacity assessment questions and considerations for counselling

This is not prescriptive. It is provided as a sample only for ideas for how College registrants can test for capacity for counselling for a child or youth client. This can be customized for other social work and social service work treatments and services.

Two-part test for capacity	Questions College registrants can ask clients	Capacity assessment ideas
Part 1: Ability to understand the information about the decision	• Tell me in your own words what has been happening in your life. • Why are you here? • Do you know what counselling is? • Do you know anyone who has gone to counselling? Have you? • Tell me in your own words about counselling. • What do you think happens during counselling sessions? • Why do you think someone might want to go to counselling? • What have we discussed? • What does this mean to you? • What questions do you have about this? • Is there any word you do not understand? • What does confidentiality mean to you? What are the limits?	Listen for an understanding that counselling involves talking to a trained person to help with problems, emotions etc. Check to see if they are only listening and complying because they are intimidated or scared; can they actually understand? Consider explaining what to expect in a variety of ways. Do their answers only repeat what they were told? Or are they able to bring their own words and thoughts to explain? Do they understand counselling includes talking, and being listened to, confidentiality? Listen for ability to understand that the purpose of counselling is to get support, help with problem-solving, mental health supports. Have I provided the client with the necessary information, service and resources to facilitate the client's decision-making? If the client asks relevant questions, that is usually a good indication of the ability to understand – but may not be determinative.

Two-part test for capacity	Questions College registrants can ask clients	Capacity assessment ideas
Part 2: Ability to appreciate the foreseeable consequences of giving consent to the decision, or declining to consent to the decision	• What are the pros and cons of counselling? • How do you think counselling might help you? • What might be hard or uncomfortable about going to counselling? • What will happen if you say yes? Or no? • What do you think your choices are when it comes to counselling? • Do you think you could stop coming to see me if you wanted to? • What factors are you thinking about to come to a decision? • What are the possible risks and benefits of counselling? • How will you decide what to do? • Do you think counselling could be good for other people, just not you? • What do you think the impact of your decision will be? • Do you think there are other ways to get help if you don’t want counselling? • Do you have any questions about what can happen?	Do they know they can say yes or no and that it is voluntary? Check if they can differentiate between what counselling means in the abstract and then how it would apply to them. Check understanding of consent being ongoing and revocable. Look for recognition that it might help them feel better, cope, understand things. Do they realize that problems might continue or worsen without support? Assess critical thinking and whether they can evaluate alternative supports. Check insight into decision-making process and weighing of pros and cons.

Documentation

Registrants should document their assessment of whether a child/youth client is capable or incapable of making their own decision in relation to the treatment, service or information privacy decision contemplated.

STEP 3: OBTAINING INFORMED CONSENT

Securing informed consent is fundamental to maintaining ethical standards in practice.

Children must receive information in an age-appropriate and accessible way to help them make informed choices. Registrants should discuss with clients their rights and options and give them honest, accurate and complete information about the treatment, services or information privacy decision.

A client of any age who is assessed by a registrant as capable can make their own decision without needing any additional permission from parents or guardians. When a child or youth is capable of making their own decision, they also have the right to determine who will be informed about the decision, with whom information is shared and who can have a copy of their social work or social service work record. In accordance with Standard of Practice Principle 4.4.2, if, in the registrant's professional judgment, disclosure of information from the record to a third party could result in harm to the client, the College registrant must make a reasonable effort to inform the client of the possible consequences and seek to clarify the client's consent to such disclosure.

Registrants should be aware of power imbalances and coercion for children and youth clients. Decisions must be voluntary and without undue influence by the registrant, another practitioner, family, friends, social media or other sources.

If the capable client is over the age of 16, they may authorize someone else to act on their behalf to consent to the collection, use or disclosure of health information.

Parental assent and involvement

Registrants should actively encourage capable children to involve their parents/guardians and other supportive adults or friends in decision-making processes and to share relevant information with them, whenever it is safe and appropriate to do so.

It is often useful for registrants to suggest proactively to child clients information that the registrant can share with parents/guardians to help those support people feel engaged and to help them be aware of any risks. If the capable client has any questions or limits to how they want information shared, the registrant must respect those limits.

There may also be situations where registrants will need to advocate and explain to parents/guardians and others that the child has the authority to make their own independent choices and may need to give children space to consider their own views of what to do independent of their parents/guardians or other supportive adults or friends.

Employer policies that require parental notification

Registrants should follow any consent policies of their employer or the setting in which they are providing services unless they conflict with College standards.

Some organizations may limit providing services to children and youth only with parental knowledge and consent. Some organizations require parental consent for clients under specified ages (regardless of capacity). Those policies do not necessarily conflict with College standards so long as registrants only provide services to capable children with the capable child's consent and respect the information privacy decisions of capable children.

In cases where the organizational default is notifying and including parents, registrants should be honest and clear with child/youth clients about the limits of confidentiality. Registrants should be clear both with the children and their parents about what types of information will be shared and how risk and danger will be handled. Registrants should advocate for children to be supported in their self-determination while acknowledging the support systems of family and supportive adults.

In settings where parental consent is sought regardless of the capacity of child/youth clients, registrants must still assess capacity and seek consent from children/youth who are capable prior to providing services.

Registrants should also assess for safety risks when notifying parents, and if determined that it is unsafe for parents to be informed or parental consent to be asked, alternative routes to service provision must be sought, such as developing a policy that circumnavigates the need for parent consent in the presence of safety concerns, or referrals are made to another service. In addition, registrants should consider safety and risk when seeking additional parental consent *during* service delivery.

Decline or withdrawal of consent

Capable children may decline treatment, services and sharing their information, subject to some exceptions. Registrants should document the client's decision to decline and reasons that are offered if any.

Even if a parent or guardian agrees to the service, a registrant cannot engage with a capable child against their will.

If a capable child has provided consent and then changes their mind, the registrant must accept the withdrawal of consent going forward. Withdrawals of consent are not retrospective and do not nullify action taken by a registrant when consent had been given.

Consent by substitute decision-makers for incapable children

If a child or youth client is incapable to make their own decisions about treatment, services or information privacy, a substitute decision-maker (SDM) must be identified to make decisions on their behalf.

In most cases, parents will act as SDMs. However, there is a legal list of who makes decisions when children are incapable. The HCCA, CYFSA, and PHIPA use the same ranked list of SDMs:

1.	Guardian of the person or guardian of property (depending on the decision) appointed by a court.	These require a legal process or documentation. Registrants may rely in good faith if someone purports to hold one of these legal positions. Registrants may also ask to see a copy of this documentation if there is any concern or dispute about the legitimacy of the person holding the role.
2.	Attorney for personal care or property (depending on the decision) set out in a power of attorney document signed and witnessed. *(note: Children under the age of 16 cannot execute a power of attorney for personal care –so they will not have one. Children under the age of 18 cannot execute a power of attorney for property – so they will not have one).*	
3.	Representative appointed by the Consent and Capacity Board	
4.	Spouse or partner	Automatic family members Registrants may rely in good faith if someone purports to be a family member. Registrants may also ask for evidence of family relationships if there is a dispute about the legitimacy of the person as a family member.
5.	Parent (which refers to someone with custody or decision-making authority for the child or youth and not a parent with a right of "access" only and not a parent if children's aid society or Indigenous child and family well-being agency has authority) or children's aid society/ Indigenous child and family well-being agency or child who is at least 16 years old.	
6.	Parent with only right of access	
7.	Brother or sister	
8.	Any other relative	
9.	Office of the Public Guardian and Trustee	Automatic SDM of last resort

An SDM must be at least 16 years of age, unless they are the parent of an incapable child.

Parents are usually the SDMs if their child is incapable, except:

- If the parents are separated or divorced, there may be a court document that grants one parent decision-making responsibility. Parents may have to produce court documents or separation agreements to prove to a registrant who has decision-making responsibility.
- If the child is in the care and custody of a children's aid society or Indigenous child and family well-being agency.
- If the parents are deceased, the person who has custody of the child becomes the SDM.

- If the parents are not available (for any reason such as they are out of town and cannot be reached, or are in detention or unconscious), the child's sibling can be the SDM (as long as the sibling is over the age of 16 years).
- If there are no available parents and no siblings, then any other relative can be the SDM.
- If there are no other family members, the Office of Public Guardian and Trustee must be contacted and is the SDM of last resort.

Disagreements between substitute decision-makers for incapable clients

If there are two or more SDMs for an incapable client (such as parents), those SDMs make decisions together. They are equally ranked, which means none of them has a higher right to make decisions over another.

For a registrant to obtain consent to proceed with treatment, counselling, care, service or information sharing about a client, the SDMs must agree. If one of the SDMs does not agree, there is no consent. In general, consensus decision-making is required.

The Information and Privacy Commissioner of Ontario (IPC) has had to adjudicate disagreements between parent SDMs for incapable children under the health privacy laws.[16]

A few key themes arise for registrants from those IPC decisions:

1. If there are two or more SDMs for an incapable child, and one of the SDMs asks for a copy of the child's information, it is reasonable to provide the information to the requester without having to canvass the other SDMs (unless another SDM has instructed the health information custodian that they object to the requestor receiving a copy of the health record).
2. As one of two (or more) equally ranked SDMs, a parent does not have an independent right under PHIPA to request access to records over the objection of the other SDM(s). Once one SDM objects to the custodian sharing information with the other SDM, information cannot be given to the other SDM.
3. Where there is reason to believe that an equally ranked SDM disagrees with a request, the custodian must canvass consent from the other SDMs going forward.

Registrants may have to seek legal or other professional advice to manage difficult disputes between SDMs.

Assent and involvement of incapable children

Registrants should actively encourage SDMs to involve children in decision-making processes and to share relevant information with them, whenever it is safe and appropriate to do so. Reflecting on Katelynn's Principle, the child must be at the centre where they are the subject of or receiving services. Registrants may need to use very simple language to explain to an incapable child what is going to happen so they are not unnecessarily surprised or otherwise negatively impacted.

STEP 4: CONSIDERING THE LIMITS OF CONSENT AND OVERRIDES TO CONFIDENTIALITY AND/OR REPORTING OBLIGATIONS

Mandatory reporting

Registrants should be familiar with their mandatory reporting obligations under the College Mandatory Reporting Guide.

Principle 5.1.3 of the Standards of Practice requires registrants to communicate with clients about the limits of confidentiality as soon as possible in the professional relationship:

College registrants shall inform clients early in their relationship of the limits of confidentiality of information. Limits to confidentiality may include registrants being required to share information with:

- supervisors;
- interprofessional teams;
- administrative staff;
- students and volunteers;
- appropriate accreditation bodies; and
- children's aid societies/Indigenous child and family well-being agencies, the College, law enforcement organizations and/or other organizations, as required by law.

Limits of confidentiality and reporting obligations should be discussed with child and youth clients up front or as soon as possible when starting a therapeutic relationship.

Risk of harm

Registrants working with children and youth clients may face situations where there is a significant risk of harm to the clients or others. Examples might include: illegal sexual activity, use of firearms, suicidal/homicidal ideation. In such cases, registrants are required to use their professional judgment when the risk of harm to the client or any other person overrides the usual commitment to confidentiality.

The main section of PHIPA regarding risk of harm that registrants need to know about is section 40, which gives discretion to disclose personal health information if there is a significant risk of serious bodily harm:

Disclosures related to risks

40 (1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.

That means, when assessing risk and determining whether to share information with the client's family, school, police or others, registrants can:

- Tell **anyone** appropriate in the circumstances (not just police or family) if telling them will help to eliminate or reduce risk – i.e. there is something that they could do about the situation.
- Share **any** personal information and amount of information (as long as it is the least amount appropriate in the circumstances).
- Have reasonable grounds and use their judgment and are not held to a standard of perfection or certainty.
- (*and should*) Consider the likelihood of the risk happening.
- (*and should*) Consider the potential consequences of the risk.
- Consider the impact of the risk to the client or any other identifiable person or group.

Risk mapping is a technique that can be used to assess actual and potential risks. It is a process that looks at the consequences of an event – severe, major, moderate, minor or insignificant and the likelihood of an event happening – almost certain, likely, possible, unlikely or rare. You can use a risk map to assess whether something is "risky" or not.

Registrants are invited to use a map such as this to help think through the likelihood and consequences of risk to a client:

	Consequence					
Likelihood		**Severe (5)**	**Major (4)**	**Moderate (3)**	**Minor (2)**	**Insignificant (1)**
	Almost Certain	High	High	Elevated	Elevated	Moderate
	Likely	High	Elevated	Elevated	Moderate	Moderate
	Possible	Elevated	Elevated	Moderate	Moderate	Low
	Unlikely	Elevated	Moderate	Moderate	Low	Low
	Rare	Moderate	Moderate	Low	Low	Low

Consequences:

Severe	Death (suicide, homicide), irreparable physical or mental harm, weapons, explosives, terrorism, abduction, sexual assault/abuse, illegal sexual activity, human trafficking, child in need of protection (physical, sexual, emotional harm), serious environmental hazards (bioterrorism)
Major	Significant physical or mental harm (including self-harm), violence, threats, stalking, harassment, missing person identified by police[17], loss of consciousness, overdose, starvation, discrimination (human rights), loss of function or ability to complete activities of daily living
Moderate	Delayed recovery, moderate physical or mental consequence (including self-harm), risky consensual albeit legal sexual behaviour, risky pharmaceutical or drug use, poor clinical choices, poor self-care, isolation, damage to property, verbal abuse, breakdown in therapeutic relationship
Minor	Delayed service, minor physical or mental impact (including self-harm), suboptimal self-care, use of profanity
Insignificant	Little to no physical or mental impact, discomfort, rudeness, preference not met, uncomfortable/unpleasant conversation, inconvenience, embarrassment

The risk map can be used to determine a total risk of harm score, which can assist College registrants to understand how to take action:

High 9-10	**Elevated 7-8**	**Moderate 5-6**	**Low 2-4**
Madatory urgent action	Take action - consider risk	Monitor	Accept risk

Risk Level	Action Required
High (9-10)	• Clear need to take action to protect a life – safety overrides privacy • Usually means calling police or 9-1-1 • Usually means calling parents/guardians • Often also involves warning potential victims • Get legal/professional advice during or after • Activate clinical supports for client • Notify client's support community as appropriate • Active monitoring until risk dissipates • Report to supervisors or leadership ASAP • Make mandatory reports if required • Document all relevant information • Usually requires incident report
Elevated (7-8)	• Discretion to warn – do evaluation of risk • Consider to whom reporting information would reduce or eliminate the risk of harm (parents/guardians? Police? Trusted friend? Other care providers?) • Consider notifying client's support community as appropriate • Nuanced conversation about what information will be shared • Get legal/professional advice if there is time • Consult with supervisors/leadership ASAP • Activate clinical supports for client • Active monitoring until risk dissipates • Document all relevant information • May require incident report
Moderate (5-6)	• Note the risk • Discuss with client options to de-escalate and how to avoid isolation (nuanced privacy conversations to engage parents/guardians and clinical supports) • Encourage client to have community support (for example at school) • Activate clinical supports • Document all relevant information • Monitor as appropriate and as situation changes
Low (2-4)	• No action needed • Does not usually require documentation • Consider clinical needs to meet • Encourage client to have community support • No sharing without consent

Sharing of information about which the client did not decide

Registrants should also be aware that PHIPA and CYFSA allow parents/guardians of clients who are under the age of 16 to authorize the collection, use or disclosure of the client's personal information, except if the information relates to:

- treatment within the meaning of the HCCA about which the child made their own decision; or
- counselling under the CYFSA where the child made their own decision to participate.[18] That can mean that parents/guardians of children under the age of 16 can ask registrants for and have copies of information relating to services before the child/youth became capable or services for which the child/youth is still incapable.

However, if the child is capable to make decisions and objects to the release of the information (to the parent or anyone else), the child's decision overrides the decision of their parents (or legal guardians).

Age	**Consent**	**Decision-Maker**
Person of any age	If capable	Can make decisions about release of everything in their own record
Person of any age	If incapable	Needs a SDM to release anything in record
Person under the age of 16 (birth to 16 less a day)	If capable	Can make decisions about release of everything in their own record AND a parent can also consent to release of information about any treatment or counselling that child did not consent to on their own BUT NOT IF THE CAPABLE CHILD OBJECTS TO PARENT MAKING SUCH DECISIONS

School evaluations

For registrants working at school boards, the *Education Act*, MFIPPA, and Ministry of Education Standards create additional context for how certain student information must be shared with parents/guardians (or could be shared with parents/guardians on request) that may impact student privacy and create obligations to obtain parent/legal guardian consent for service in some cases.

For example, meetings of the Identification, Placement, and Review Committees (IPRC) in a school board are open to the parents of the student being considered. Parents must consent to formal assessments done by registrants for that IPRC purpose, even if the student is capable. Parents must be given a copy of any documentation that goes before the IPRC. Parents are entitled to be informed and involved regardless of whether the student is capable to make their own decisions. In such cases, registrants should be clear with students at the time of engagement about the limits of confidentiality and what would be shared with the IPRC or their parents/guardians.

Similarly, formal assessments relating to human rights accommodation of ability within the classroom or broader education system may require parental knowledge and consent in a school board.

Sample script for explaining the limits of confidentiality

This is not prescriptive. It is provided as a sample only for ideas for how College registrants can explain the limits of confidentiality to child and youth clients. This can be customized to suit the specifics of the relationship and context. This can also be supplemented by a form[19] *or written explanation.*

Script for a capable child/youth

Before we start, I want to talk to you about privacy. Privacy means that everything you share with me stays between us most of the time. You can tell me anything, and I'm here to listen and help.

I keep notes about what we talk about. If you ever want to see these notes, just ask me, and I'll show them to you.

There are times when I might need to share what you tell me with other people. Let me explain when that might happen:

- Safety first: If you tell me that you are really angry or sad and want to hurt yourself or someone else, or if someone is hurting you or another kid, it is my job to keep you and others safe. I might need to tell someone like your parents or the police or a group in our community that protects kids called the [children's aid society or Indigenous child and family well-being agency].
- Court: If you or your family are in court, sometimes the court might tell me to share my notes.
- Telling your parents: After each session or if they ask me, I will tell your parents in general how you are doing. If there is anything you do not want me to share, we can discuss that first.
- Helping at school: If you need help at school, I might need to share some of what we talk about with your teachers or school staff. I'll explain everything to you so you understand what is being shared and why.
- My supervision: I have a boss and a College that oversee my practice as a social worker/ social service worker. I might share information with them about you to assist me in my work with you.
- Teamwork: I work with people who help me organize our appointments and keep records. Sometimes, they see the notes I write.

If you have any questions or if you're not sure what's private, just ask me! We can talk about it together, and I'll explain everything so you feel comfortable and safe.

Scenarios

SCENARIO 1 – CAPABLE CLIENT; PARENTAL DISAGREEMENT REGARDING CONSENT

Q: A registrant working in an Indigenous Health Team is referred a 15-year-old by the child's parent with whom they live. There are two parents who have joint custody. According to the first parent, the child has expressed thoughts of self-harm. The first parent feels the child is in urgent need of help. The first parent also states that the second parent would likely refuse permission for the registrant to see the child.

Can the registrant proceed with counselling on the basis of the 15-year-old client's consent only? Or does the registrant require permission from one or both parents? What if the child's second parent contacts the registrant and refuses consent or wants to withdraw consent for service?

A: The registrant should consider any workplace policies that apply and establish rules above and beyond the law for participation of children and youth in services.

Yes, the registrant can proceed with counselling on the basis of the 15-year-old client's consent only, unless the registrant assessed the client as incapable of providing consent. The registrant does not require permission from one or both parents. If the second parent contacts the registrant to object to the counselling, the registrant can proceed with counselling despite the second parent's objection if the client has provided consent.

The registrant may want to discuss proactively with the 15-year-old client how much information the client consents to share with each of their parents and how the registrant proposes to manage conflicts with the parents that may arise.

If at any time the registrant believes there is a significant risk of suicide or significant self-harm, the registrant must assess how to ensure the client's safety. That may include sharing information with one or both parents.

SCENARIO 2 – CAPABLE CLIENT; RISK OF HARM

Q: A registrant working in a community health centre is referred a client by a physician colleague from within the centre. At the initial meeting with the registrant, the client, age 13, says that they make contact with adults through the internet and frequently sneak out of the house at night to meet them. The youth has had numerous sexual partners. The youth agrees to continue to see the registrant only if the registrant does not disclose any information to their parents.

Can the youth consent to counselling without parental consent? Is the registrant obliged to inform the parents of the child's high-risk behaviour? Are there other reporting obligations? What are the obligations of the registrant to keep the information about the 13-year-old confidential?

A: The registrant should consider any workplace policies that apply and establish rules above and beyond the law for participation of youth in services.

Yes, the client can consent to counselling without parental consent if the child is capable.

Given that the youth is 13 years old and engaged in illegal sexual activity (note, 13-year-old children cannot consent to sexual activity with adults, that behaviour is a Criminal Code of Canada offence), there is a mandatory duty to report the high-risk behaviour to a children's aid society or Indigenous child and family well-being agency.

The registrant should also notify the referring physician colleague at the centre and follow any specific reporting requirements of the centre.

The registrant could also contact the youth's parents/guardians to discuss the high-risk sexual activity to reduce the risk of ongoing significant harm to the youth.

The registrant should also consider how much detail is required to fulfill the mandatory disclosure obligations to child welfare agencies and to parents to respond to the safety issues. When in doubt, the registrant should err on the side of safety and share as much information as necessary to protect the client.

At the initiation of service, the registrant would have alerted the client of the limits of confidentiality related to potential risk of harm and criminal activity. Regardless of a client being aware of the limits of confidentiality, any time that an override of privacy happens, there can be pressure and negative impact on the relationship with the client. The registrant should consider whether it is safest to notify the client about the mandatory report before or after making the report.

The registrant should be transparent with the client about why the duty to report was triggered and offer supports post report to reestablish trust.

There may be some details that do not need to be shared with the client's parents as part of the safety disclosure. Registrants should look for ways to respect client confidentiality to the extent possible, even if there was a risk of harm.

SCENARIO 3 – CONSENT FORMS

Q: A registrant working in a multi-disciplinary team is preparing to begin meeting with clients to offer counselling services. The consent form that the rest of the team members use does not refer to the limits of confidentiality of information.

Does the consent form need to be revised? How should the registrant ensure that clients are informed of the limits of confidentiality?

A: The registrant can:

1. Advocate for the form to be updated to include all the relevant precautions and clarifications about the limits of confidentiality; and/or
2. Provide a more detailed verbal discussion with clients and document those discussions and the fact of the more detailed conversation about confidentiality and its limits in their progress notes.

SCENARIO 4 – CAPABLE CLIENT; UPDATES TO CHILDREN'S AID SOCIETY

Q: A children's aid society worker provides a registrant in private practice with a copy of a court order stating that the children's aid society has custody and decision-making authority for a 14-year-old client. The court order states that the children's aid society has sole decision-making authority for the child's health care and education decisions. A few months after counselling has begun, the children's aid society worker asks the registrant for a verbal update about the youth and how service is going. Should the registrant provide the client's personal health information to the children's aid society?

A: At the onset of the relationship, the registrant should discuss with the 14-year-old client the fact of the court order, issues of informed consent, and any limits of confidentiality. The registrant should consider obtaining legal advice to ensure they properly understand the parameters of the court order, including determining whether the court order governs the provision of personal health information to the children's aid society.

Upon receipt of a request for client information from children's aid society, the registrant should again discuss this with the client and determine what information can or should be disclosed. The registrant may again benefit from legal advice.

If, at any time, the registrant concluded the client was in need of protection from sexual, emotional or physical abuse or neglect, the registrant would be required under the CYFSA to report to the children's aid society.

SCENARIO 5 – LIMITS OF CONFIDENTIALITY

Q: A registrant working in a high school is providing counselling services to a 16-year-old. The client asks the registrant to see a friend who is another student and who is distressed after allegedly witnessing a murder. The friend reportedly would like to see the registrant but before doing so, wants reassurance that the registrant will not make a report to the police.

What are the registrant's reporting obligations? Can the registrant guarantee the client's friend that the information they provide will be kept confidential?

A: No, the registrant cannot guarantee to the client's friend that the information they provide will be kept confidential. The registrant has an obligation to explain the limits of confidentiality.

The registrant will also need to consider any additional policies and procedures of the school board.

SCENARIO 6 – INCAPABLE CLIENT, SDM DISPUTE

Q: A registrant has been seeing a 13-year-old client with significant brain injuries for months related to a youth justice matter. The parents have equal joint custody but are divorced and disagree about many aspects of the supports needed for their child. To date, the parents have

agreed to service and signed consent forms for their child's participation in group sessions, private sessions and sharing information with the court. The registrant has been routinely sharing information updates with both parents. Out of the blue, Parent B proactively asks the registrant not to share information with Parent A any longer.

Can the registrant continue to share information with Parent A?

A: The registrant should clarify who is the health information custodian under PHIPA or the service provider under Part X of the CYFSA in this scenario.

The registrant would ask questions of Parent B to discover more information about what has changed with Parent A. Registrants should take special care to assess any new safety or risk of harm issues that have arisen. Unless it is inappropriate to do so in the circumstances, the registrant would encourage the parents to continue to co-parent with equal access to information. However, the registrant may need legal or professional advice as some scenarios will not resolve without legal intervention either by the custodian or parents through the IPC of Ontario, the Consent and Capacity Board, Family Court or other court to resolve their decision-making disagreements.

The IPC of Ontario has addressed these kinds of scenarios. In general, if the parents are equal SDMs, one can object to the health information custodian or service provider sharing information with the other SDM(s). Under PHIPA or CYFSA, the registrant would have to note the objection to sharing information with Parent A and prior to any sharing, talk to Parent B. If Parent B still objected, the registrant could not share the information with Parent A. However, Parent A also has the ability to instruct the registrant to do the same to Parent B. These types of matters may be best addressed before a Family Court or Privacy Commissioner.

ENDNOTES

[1] Relevant provincial and federal laws may include, but are not limited to: *An Act respecting First Nations, Inuit and Métis children youth and families* (Canada), *Child, Youth and Family Services Act*, 2017, *Criminal Code* (Canada), *Criminal Records Act*, *Education Act*, *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, *Health Care Consent Act*, 1996, *Mental Health Act*, *Personal Health Information Protection Act*, 2004, *Personal Information Protection and Electronic Documents Act* (Canada), *Privacy Act* (Canada), *Provincial Offences Act*, *Social Work and Social Service Work Act*, 1998, *Vital Statistics Act*, and *Youth Criminal Justice Act*. All of these Acts can be found on the publicly available website CanLII at www.canlii.org. Registrants should seek legal advice/consultation if they are not sure of a particular legal issue.

[2] See section 4 of the *Children's Law Reform Act*; see also sections 21(1) and 281 of the CYFSA.

[3] If there is a question about who is a "parent", see sections 4-13 of the *Children's Law Reform Act*.

[4] For example, see HCCA, s. 4; CYFSA, s. 21; PHIPA, s. 21.

[5] Generally, registrants must obtain consent to initiate any treatment, counselling or care.

[6] Note that special considerations made apply to obtaining consent in the context of particular types of assessments, like (for example) forensic court-ordered parenting assessments under s. 30 of the *Children's Law Reform Act*, RSO 1990, c C.12 or under section 112 of the Courts of Justice Act, RSO 1990, c C.43.

Registrants should consult the relevant legislation, any applicable court order(s) in the particular case to which the assessment relates, the College's *Practice Guidelines for Parenting Plans for College Registrants* (September 1, 2024) and *Code of Ethics and Standards of Practice.*

[7] Note that PIPEDA is expected to be replaced by the *Consumer Privacy Protection Act* (CPPA), but at the date of publishing these Guidelines the CPPA has not yet come into force.

[8] For example, see sections 25-27 of the *Health Care Consent Act*.

[9] For example, see section 40 of the *Personal Health Information Protection Act*, 2004.

[10] For example, see section 125 of the *Child, Youth and Family Services Act*, 2017.

[11] For example, see section 44 of the *Personal Health Information Protection Act*, 2004.

[12] For example, see the Tri-Council Policy Statement: *Ethical Conduct for Research Involving Humans*, 2022.

[13] In Ontario, none of the common law, treatment law (HCCA), privacy law (PHIPA), or service and privacy law (CYFSA) set out an age that determines whether a child is capable of consenting. All of those laws establish a capacity test. However, under section 23(1) the CYFSA, a service provider may provide a counselling service to a child who is 12 or older with the child's consent, and no other person's consent is required, but if the child is younger than 16, the service provider must discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent. If the counselling service being provided is a treatment to which the HCCA applies, the consent provisions of the HCCA apply instead of section 23(1) of the CYFSA.

[14] See, for example, sections 299-300 of the CYFSA, regarding "personal information" and "capacity and substitute decision-making", which codifies the presumption of capacity in that context.

[15] See, for example, the formulation of this test in s. 21 of the CYFSA, regarding consent and voluntary services: 21(1) In this section, "capacity" means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding or withdrawing the consent or making, not making or terminating the agreement.

[16] See for example, decision 107 and decision 160 of the Information and Privacy Commissioner of Ontario under PHIPA.

[17] OCSWSSW, Q&A: The Missing Persons Act

[18] See section 23(2) of PHIPA and section 301(2) of the CYFSA.

[19] See also Robert Solomon, Legal Guide for Social Workers & Social Service Workers, Chapter 2: Consent to Treatment, Counselling and Care, Part 3: Consent Forms, p. 40-42.

[20] A process of self-reflection to understand personal and systemic biases and to develop and maintain respectful processes and relationships based on mutual trust. Cultural humility involves humbly acknowledging oneself as a learner when it comes to understanding another's experience.

[21] 1. The act of directly representing or defending others. 2. Championing the rights of individuals, groups or communities through direct intervention or through empowerment. It is a basic obligation of the professions and its registrants.

[22] Information provided by a client that relates to others and/or the client themself, as well as information about the client provided by others (for example, information concerning the client's mental or emotional health provided by other health professionals or contained in records from other sources).

[23] A written statement concerning a fact that is communicated to the affected person, giving that person an awareness of the fact.

[24] A legal document requiring a person to attend before a court or a tribunal, or at an out-of-court examination, to be examined as a witness in a legal proceeding.

[25] Information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or in combination with other information, to identify an individual.

[26] Information provided by a client that relates to others and/or the client themself, as well as information about the client provided by others (for example, information concerning the client's mental or emotional health provided by other health professionals or contained in records from other sources).

[27] An interpersonal relationship between an individual or organization possessing special expertise and someone who needs that expertise to solve a specific problem. Consultation in the context of social work or social service work practice is a problem-solving process in which advice and other helping activity from the consultant is offered to an individual, group, organization, or community that is faced with a job-related problem. Unlike supervision, which is relatively continuous and encompasses many areas of concern, consultation occurs more on an ad hoc, or temporary basis, and has a specific goal and focus. Unlike the supervisor, the consultant has no special administrative authority over those to whom advice is given.

[28] An administrative and educational process through which supervisees develop and refine their social work/social service work knowledge and skills, engage in critical self-reflection, improve their resilience, and ensure that they are able to provide quality care and services to their clients. Supervisors may assign cases, discuss assessment and intervention plans and review ongoing contact with clients. Supervision may also assist the supervisee in gaining a better understanding of social work and/or social service work philosophies, agency policies, and community resources. Less experienced College registrants typically require more frequent and formal supervision, whereas those who are more experienced may seek supervision less frequently, engaging instead in case consultation, peer

group interactions or other professional development. Educational supervision is oriented toward professional concerns and specific cases whereas administrative supervision focuses on agency policy and public accountability. College registrants may be supervised by Indigenous Elders or registered professionals from outside the profession. Supervisors are providing direct social work/social work services and it is an act of professional misconduct to fail to provide adequate supervision.

[29] In relation to the practice of social work or social service work by one or more College registrants, "professional corporation" means a body corporate with share capital incorporated or continued under the *Business Corporations Act*, RSO 1990, c. B.16 for the purpose of practising social work or social service work, that holds a valid certificate of authorization issued under the *Social Work and Social Service Work Act*, S.O. 1998, c. 31.

Resources

For more information about this or other practice issues, please contact the College's Professional Practice Department at practice@ocswssw.org.

The following resources may be useful to College registrants when working with children and youth.

Canadian Mental Health Association – Ontario, Understanding Common Legal Issues in Child and Youth Mental Health

Government of Canada, What does the Act respecting First Nations, Inuit and Métis children, youth and families mean?

Government of Ontario, Children and young persons' rights resource

Government of Ontario, Parenting time, decision-making responsibility and contact

Government of Ontario, Policy directive: CW 003-21: Collection and reporting of identity-based data

Information and Privacy Commissioner of Ontario, Part X of the Child, Youth and Family Services Act: A Guide to Access and Privacy for Service Providers

Information and Privacy Commissioner of Ontario, Sharing Information in Situations Involving Intimate Partner Violence: Guidance for Professionals

Information and Privacy Commissioner of Ontario, Yes, You Can. Dispelling the Myths about Sharing Information with Children's Aid Societies

Justice for Children and Youth, Healthcare and Mental Healthcare: Legal information for young people in Ontario

Justice for Children and Youth, Summary of Age-Based Legal Milestones for Youth in Ontario, Canada

Ministry of Education, Memorandum 9: Duty to report children in need of protection

Ministry of Education, Memorandum 81: Provision of health support services in school settings

Ministry of Education, Memorandum 169: Student Mental Health

New Brunswick Association of Social Workers, Guideline on Assessing the Capacity of Minors

Ontario Association of Children's Aid Societies, Capacity to consent in child welfare

Ontario College of Social Workers and Social Service Workers, Privacy Toolkit for Social Workers and Social Service Workers

Ontario College of Social Workers and Social Service Workers, The Duty to Report under the Child, Youth and Family Services Act, 2017

Solomon, Robert, Legal Guide For Social Workers & Social Service Workers, Fourth Edition (2024)

The Ontario Caregiver Organization, FAQS: On Privacy and Consent for Caregivers of Children and Youth

The Ontario Caregiver Organization, Understanding Health Privacy and Consent in Ontario: a Guide for Caregivers and Care Providers

Unicef Canada, The Convention on the Rights of the Child in child friendly language

Appendix A: Excerpts from OCSWSSW Code of Ethics and Standards of Practice

PRINCIPLE II: COMPETENCE AND INTEGRITY

College registrants shall maintain competence and integrity in their practice and adhere to the standards in the Ontario College of Social Workers and Social Service Workers' *Code of Ethics and Standards of Practice* and the College's bylaws.

INTERPRETATION

2.1 Competence

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2.1.4 College registrants shall be familiar with emerging social work or social service work knowledge and practice relevant to their areas of professional practice.

. . . .

2.1.6 College registrants shall be knowledgeable about the policies, legislation, programs and issues related to the communities, institutions and services in their areas of practice.

. . . .

2.2 Integrity

College registrants shall recognize that they are in a position of power and responsibility to all clients and that they are responsible for ensuring that clients are protected from the abuse of such power during and after the provision of professional services.

. . . .

2.2.14 College registrants shall promote equity, inclusion and belonging in their work with clients and shall advocate for social change that challenges systemic oppression and seeks to eliminate implicit bias. College registrants shall approach all aspects of their work with humility (including cultural humility) and recognize how privilege and power imbalances affect policies and practice and impact clients.

2.2.15 College registrants educate themselves on the role that the social work and social service work professions have played in perpetuating harm against Indigenous peoples, and demonstrate their understanding that Indigenous clients and Indigenous College registrants did not contribute to the damaging effects of colonization.

2.2.16 College registrants shall strive to enhance the capacity of clients to address their own needs. College registrants shall assist clients to access necessary information, services and resources wherever possible, and shall promote and facilitate client participation in decision-making.

2.2.17 Where the client is competent and able to give instruction, advocacy shall be at the direction of the client.

. . . .

PRINCIPLE III: RESPONSIBILITY TO CLIENTS

College registrants shall ensure that professional services are provided responsibly to those persons, groups, communities or organizations seeking their assistance.

INTERPRETATION

3.1 College registrants shall not discriminate against anyone, including but not limited to on the basis of citizenship, race, place of origin, national or ethnic origin, language, colour, ancestry, creed, sex (including pregnancy), family status, marital status, genetic characteristics, religion, worldview, sexual orientation, gender identity, gender expression, age, class, social-economic status or ability.

3.2 College registrants shall adhere to the *Ontario Human Rights Code*, the *Canada Human Rights Act*, and the *Canadian Charter of Rights and Freedoms*, where applicable, in the provision of services.

3.3 College registrants shall obtain informed consent from clients, where needed, before providing social work or social service work services, including but not limited to, by:

- providing accurate and complete information about the services available;
- explaining the advantages and disadvantages of receiving/not receiving services;
- describing the expectations and limitations of service;
- explaining clients' rights with respect to capacity, information privacy and confidentiality;
- clarifying registrants' mandatory reporting obligations and other limits to confidentiality (for more information see Principle V: Confidentiality, interpretation 5.1.3); and
- providing information in a way that is appropriate for the client's cognitive ability.

. . . .

PRINCIPLE IV: THE SOCIAL WORK AND SOCIAL SERVICE WORK RECORD

The creation and maintenance of records is an essential component of ethical and professional practice. The process of preparing and organizing material for the record facilitates the understanding of the client and client system and allows for the planning of appropriate interventions. The purpose of the social work and social service work record is to:

- document services in a recognizable form;
- ensure the continuity and quality of service;
- establish accountability for and evidence of the services rendered;
- enable the evaluation of service quality; and
- provide information to be used for research and education.

College registrants shall ensure that records are current, accurate, contain relevant information about clients and are managed in a manner that protects client privacy and in accordance with any applicable privacy and other legislation.

INTERPRETATION

. . . .

4.3 Access and Correction of a Record

4.3.1 College registrants shall comply with the requirements regarding access to and correction of client information including personal information in a record as set out in applicable privacy and other legislation.

4.3.2 College registrants employed by an organization shall acquire, maintain an understanding of, abide by, and inform clients and/or their authorized representative about the organization's policies regarding access to and correction of information in a record.

4.3.3 Self-employed College registrants and College registrants who are responsible for complying with privacy legislation (See Principle V: Confidentiality, Interpretation 5.1.8) shall establish and communicate to their clients clear policies regarding access to and correction of information in a record.

4.3.4 College registrants shall provide the client or the client's authorized representative with access to the client record in accordance with any applicable privacy and other legislation, unless this is prohibited by law or the College registrant is otherwise permitted to refuse access.

4.3.5 College registrants shall refer to and follow relevant legislation when determining whether a person is a client's authorized representative.

4.3.6 College registrants shall provide clients or their authorized representatives with reasonable access to the client's record or such part or parts of the record as is reasonable in the circumstances. Clients and/or their representatives have the right to receive an appropriate explanation from the College registrant about the information in the client record, unless otherwise prohibited by law.

4.3.7 Where College registrants are prohibited by law from providing access to information in a record or otherwise permitted to refuse access to information in a record, they shall comply with the requirements regarding a refusal to provide access set out in applicable privacy and other legislation.

4.3.8 Where College registrants refuse access to the record, they shall inform the client of the reason for refusal and the recourse available to the client if they disagree.

4.3.9 When the record includes information that pertains to more than one client and providing access to a record could therefore mean disclosing information about another person, College registrants shall provide access to information that pertains only to the individual who has requested access unless the other person(s) has consented to the disclosure of information about themselves.

4.3.10 College registrants shall preserve the integrity of client records. If a client disagrees with the accuracy or completeness of information in a record and wishes the record amended, College registrants shall comply with the requirements of any applicable privacy and other legislation with respect to the correction of the record.

4.3.11 If a client disagrees with the accuracy or completeness of a record and wishes the record amended, College registrants may incorporate into the record a signed statement or an electronic entry authorized by the client specifying the disagreement and the client's correction. College registrants shall not obliterate any incorrect information in the record.

4.4 Disclosure of Information from a Record

4.4.1 College registrants shall inform clients early in their relationship of any limits of client confidentiality, including with respect to the client record. When clients or their authorized representatives provide consent to disclose their information to third parties, College registrants shall document this and disclose information from the record within a reasonable time. Consent shall be documented and must identify:

(i) the information that is to be disclosed, for example a partial record, the entire record, or a summary of the registrant's contact with the client;

(ii) the party or parties to whom the information is to be disclosed; and

(iii) any limits to the consent.

4.4.2 If, in the registrant's professional judgment, disclosure of information from the record to a third party could result in harm to the client, College registrants shall make a reasonable effort to inform the client of the possible consequences and seek to clarify the client's consent to such disclosure. Registrants may disclose information from the record to third parties without the client's consent only if disclosure is required or allowed by law. (See also Principle V: Confidentiality, Interpretation 5.2.4)

4.4.3 When College registrants receive a request from a third party to disclose information from a record that pertains to more than one client (for example a couple, family, group, community agency, government department, or other organization/business) College registrants shall obtain consent to the disclosure of information from all the clients before information from such record is disclosed to the third party.

4.4.4 When College registrants receive a request from a client to disclose information from a record that pertains to more than one client, College registrants shall provide access to information that pertains only to the client who has requested access (see Interpretation 4.3.9) and, before disclosing information that pertains to any other client, obtain consent to the disclosure from each of them.

4.4.5 College registrants who are served with a formal notice or subpoena to produce client records before a court and who are of the opinion that disclosure would be detrimental to the client, should themselves, or through legal counsel, advocate for non-disclosure to the court. If the College registrant is unsuccessful in their advocacy, the records must be disclosed as requested in the formal notice or subpoena .

4.4.6 College registrants shall comply with the requirements regarding the use or disclosure of information for research or educational purposes set out in any applicable privacy and other legislation.

4.4.7 College registrants may permit client records to be used for the purpose of research or education, but shall first ensure that any identifying information has been removed and clients' anonymity is protected. (See also Principle V: Confidentiality, Interpretation 5.1.11)

4.4.8 A College registrant or other regulated professional to whom another College registrant's client records have been transferred, shall comply with the aforementioned interpretations regarding access and disclosure with respect to the transferred records.

PRINCIPLE V: CONFIDENTIALITY

College registrants shall hold all client information in strict confidence and comply with any applicable privacy and other legislation. College registrants shall disclose such information only with client consent or when required or allowed by law.

INTERPRETATION

5.1 Policy and Processes

5.1.1 College registrants shall comply with any applicable privacy and other legislation.

5.1.2 College registrants shall obtain consent to the collection, use or disclosure of client information including personal information, unless otherwise permitted or required by law. 'Personal information' means information about an identifiable individual and includes (but is not limited to) personal health information.

5.1.3 College registrants shall inform clients early in their relationship of the limits of confidentiality of information. Limits to confidentiality may include registrants being required to share information with:

- supervisors;
- interprofessional teams;
- administrative staff;
- students and volunteers;
- appropriate accreditation bodies; and
- Children's Aid Societies, the College, law enforcement organizations and/or other organizations, as required by law.

College registrants shall respect their clients' right to withhold or withdraw consent to, or place conditions on, the disclosure of their information (subject to when such disclosure is required by law).

5.1.4 College registrants shall anticipate circumstances in which there may be limits to confidentiality, and discuss these limits with the team, group or community.

5.1.5 College registrants shall be aware of the distinction between consultation and supervision as it pertains to sharing client information. In consultation, clients are not identified.

5.1.6 College registrants employed by an organization shall acquire and maintain a thorough understanding of the organization's policies and practices relating to the management of client information, including:

(i) when, how and the purposes for which the organization routinely collects, uses, modifies, discloses, retains or disposes of information;

(ii) the administrative, technical and physical safeguards and practices that the organization maintains with respect to the information;

(iii) how an individual may obtain access to or request correction of a record of information about the individual; and

(iv) how to make a complaint about the organization's compliance with its policies and practices.

5.1.7 Self-employed College registrants and College registrants who are responsible for complying with privacy legislation shall establish clear policies and practices relating to the management of client information, including the matters identified in 5.1.6 (i), (ii), (iii) and (iv) above, and make information about these policies and practices readily available in accordance with any applicable privacy and other legislation.

5.1.8 College registrants who are responsible for complying with privacy legislation shall include those who are considered to be "health care practitioners" (within the meaning of PHIPA) and employed or retained by persons who are not "health information custodians" (within the meaning of PHIPA). Examples include social workers or social service workers who provide healthcare as part of their duties and are employed by:

- Children's Aid Societies:
- providers of supportive housing; and
- government bodies that provide services in correctional facilities or youth justice facilities.

5.1.9 When College registrants are employed by an agency or organization whose policies and practices conflict with College standards of confidentiality, College standards shall take precedence and registrants shall comply with the College standards.

5.1.10 College registrants shall obtain clients' consent before photographing, audio or video recording or permitting third-party observation of clients' activities. Exceptions (which may include activities undertaken during child abuse investigations, for example) may be allowed under the law or by order of the court.

5.1.11 College registrants shall comply with the requirements regarding the use or disclosure of information for research or educational purposes set out in any applicable privacy and other legislation. Where case scenarios are presented for research, educational or publication purposes, client confidentiality shall be ensured through the alteration and/or disguise of identifying information. (See also Interpretation 4.4.7.)

5.1.12 College registrants in indirect, non-clinical practice shall distinguish between public and private information related to their clients. Public information is any information about clients and/or their activities that is readily available to the general public and the disclosure of which would not harm the client and does not include personal information about an individual. Public information related to clients may be disclosed where it is appropriate to do so, provided that such disclosure is permitted by law and compliant with College standards.

5.1.13 When working with community groups, government agencies and other organizations that are clients, College registrants shall keep confidential any sensitive information about the client group, agency or organization, including human resources, financial, managerial, strategic and/or politically sensitive material, the disclosure of which could harm the client.

5.2 Disclosure of client information

5.2.1 College registrants shall obtain client consent prior to each disclosure of information, where consent is required. Clients may sign consent forms or provide verbal consent; College registrants shall document that consent was obtained.

5.2.2 When consent to the disclosure of information is required, College registrants shall make reasonable efforts to inform clients of the parameters of information to be disclosed, advise clients of the possible consequences of such disclosure, and inform clients of the following:

- who is requesting the information (name, title, employer and address);
- why the information is desired;
- how the receiving party plans to use the information;
- if the receiving party may pass the information on to a third party without the client's consent;
- exactly what information is to be disclosed;
- the repercussions of giving or refusing to give consent;
- the expiration date of the consent if applicable; and
- how to revoke their consent.

5.2.3 College registrants shall make reasonable efforts to ensure that the information disclosed is pertinent and relevant to the professional service for which clients have contracted. College registrants shall take reasonable steps to ensure that the information disclosed is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure, and shall clearly set out the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

5.2.4 When disclosure is required or allowed by law or by order of a court, College registrants shall not divulge more information than is required or allowed.

5.2.5 A College registrant, or the professional corporation through which they are practising, may disclose information to the College without client consent when required in relation to a review, investigation or proceeding under the *Social Work and Social Service Work Act*, 1998. College registrants and/or professional corporations shall not divulge more information than is reasonably required.

5.2.6 College registrants wishing to use collection agencies or legal proceedings to collect unpaid fees shall disclose, in the context of legal proceedings, only the client's name, the contract for service, statements of accounts and any records related to billing. In these circumstances, College registrants shall not divulge more information than is reasonably required. (See also Interpretation 6.1)

5.2.7 College registrants in indirect, non-clinical practice shall obtain the client's consent before:

- publishing reports about their work with the client;
- referring to their work with the client in their advertising;
- speaking with media, funders, potential funders and/or other individuals/groups about the organization, agency or community; and
- bringing guests, observers, or media to meetings involving the client.

5.3 Electronic Practice

5.3.1 College registrants using online platforms and providing virtual services shall:

- explain to clients the limits of confidentiality (including any particular limits associated with online platforms and/or virtual practice) prior to or during the first online meeting and document this conversation;
- ensure that the collection, use and storage of client information complies with applicable privacy legislation; and
- ensure that client information is stored in a jurisdiction where the privacy laws are consistent with Ontario laws or, where applicable, Canadian federal laws.

5.3.2 When communicating virtually, College registrants shall maintain client confidentiality and ensure client safety by:

- verifying the client's identity when it would be possible for another person to pose as the client;
- establishing a plan (such as a discrete phrase or sign) so that clients can convey that they are not alone and/or are not safe; and
- developing a safety plan with the client, which includes asking them for the contact information for, and permission to contact, another person in the event of an emergency or service interruption.

5.3.3 When using electronic communication to send client information, College registrants shall mark it confidential when possible, and shall ensure that it has been received by the intended recipients.

Electronic communication refers to texting, email, video chat platforms, social media platforms, websites, faxes or other types of online communication.

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