

POSITION STATEMENT: AGE OF CONSENT

A minor's right to have his/her mental health decisions respected is guided by provincial health care and consent legislation.

In Nova Scotia the age of majority is 19. Any person under this age is considered a minor. There is no legislation that grants or denies any decision making entitlement to minors. The common law doctrine of the "mature minor" therefore plays a significant role in determining minors' entitlement to make mental health care decisions. It is the only means for minors in Nova Scotia to become entitled decision makers.

The mature minor doctrine supports the position that a minor who can understand and appreciate the nature and consequences of his/her decision and its alternatives is able to give a valid consent regardless of age. In most cases, children entitled to make personal decisions in Nova Scotia will have reached adolescence.

As, in Nova Scotia there is no set age a child must reach before he/she is able to provide consent for treatment, assessment or release of information, the psychologist must thus determine, on a case by case basis, whether a child is capable of making decisions in his/her best interest.

While it would be easier and administratively more efficient to have an age-based rule, rather than individualized assessments of maturity to determine entitlement to decision-maker status, NSBEP takes the position that levels of psychological and cognitive competence vary considerably across minors and that thus an aged based versus a maturity based rule for consent, violates the rights of mature minors. NSBEP therefore does not advocate for the setting of an arbitrary age of consent.

However, to help psychologists with the process of assessing a minor's ability to consent, the following points are offered:

- The psychologist in assessing ability to consent examines whether the adolescent is capable of abstract reasoning. Research suggests that by age 14 the average adolescent has shifted from concrete operational to formal operational thinking.
- The psychologist attempts to gain an understanding of the overall context in which the decision-making occurs. This will include a number of factors, such as examining the relevant knowledge and experience the minor brings into his/her specific decision-making situation; the adolescent's problem solving skills; the minor's affect at the time of decision-making and the social support network that is in place for the minor.

- The psychologist must also gauge psychological maturation. In this regard the psychologist will consider such factors as emotional regulation, ability to self-reflect, ability to place peer influences and age specific values in perspective, ability to learn from experience and willingness to seek advice.
- With respect to the specific decision-making situation, the minor must be able to understand the nature and purpose of the treatment and/or assessment and the consequences of giving or refusing consent.
- Once the psychologist judges that he/she has sufficient information to understand the context and the minor's psychological and cognitive level, he/she uses professional judgment to make a determination as to whether the minor is able to give or refuse consent and documents the basis for this decision on the file.

In complex cases psychologists should seek appropriate consult and may also want to obtain a legal opinion.

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