

# **Records Management Guidelines: *Protecting Privacy for Survivors of Violence***

Third Edition

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These Guidelines update the *1998 Records Management Guidelines* developed by the BC Association of Specialized Victim Assistance and Counselling Programs

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# Introduction

## What are Records Management Guidelines?

A series of principles and suggested approaches. They can serve as a guide when you are creating, updating, storing, releasing, and destroying client records.

## Who are These Guidelines Designed to Assist?

Staff and board members who work in agencies funded by the Ministry of Public Safety and Solicitor General and the Ministry of Community Services and who operate under funding contracts in the following areas:

- ❖ Stopping the Violence Counselling Programs
- ❖ Community Based Specialized Victim Assistance Programs
- ❖ Transition Houses
- ❖ Children Who Witness Abuse Programs
- ❖ Outreach Programs

If you work in a multipurpose agency, your agency may deliver additional programs not listed above. These Guidelines were not specifically designed to assist in managing records for other programs. These Guidelines could be adapted for that purpose, subject to any contract requirements. If you have questions regarding record keeping requirements for a program not listed above, contact the Director/Manager of Information and Privacy for the funding ministry.

## How Should I Use These Guidelines?

These Guidelines are organized or grouped according to frequently asked questions related to privacy protection. Questions are listed in the order they would likely arise in the handling of a case.

Your agency or program can use these Guidelines as your in-house privacy policy or as a template to develop your in-house policy. The background sections included in this document can also be used as a sourcebook for best practices and further information.

## Why are Records Management Guidelines Needed?

Agencies that work with survivors are often privy to highly personal information about their clients. Agencies are also dealing with cases in which the chances of criminal or civil litigation are fairly high. In the past, in sexual assault or violence against women in relationships prosecutions, the woman's personal history, was often the focus of the case. Our *Charter of Rights, Criminal Code*, and provincial privacy laws all include provisions designed to protect privacy rights. These Guidelines help to ensure legal rights are respected by those working with victims and by those who administer our laws.

Agencies are also responding to high risk situations. A complex web of laws and standards must be considered to help avoid legal liability. These include:

- The introduction of the provincial *Personal Information Protection Act* in January 2004
- Amendments to BC's *Freedom of Information and Protection of Privacy Act*
- Amendments to Part 5 of the *Child, Family and Community Service Act* that deal with freedom of information and protection of privacy
- Amendments to the *Criminal Code* restricting access to records regarding survivors in sexual offence cases
- The requirement by some funding ministries, to have programs or agencies adhere to American accreditation standards, including standards related to record keeping
- The requirement by some funding ministries, to have program or agency practices audited by American accreditation bodies
- Privacy advocates' concerns that Canadian private sector privacy laws are not strong enough to withstand the American *Patriot Act* which gives the U.S. government broad powers to get access to personal information
- The removal of the limitation period in civil cases for legal claims relating to sexual assaults
- The growth in reporting of historical sexual abuse cases to police
- The growth in the number and complexity of sexual and spousal assault cases being handled by community-based agencies
- Defence counsel allegations of "false memory" in sexual assault/abuse cases

- Requests for community-based agencies to disclose confidential client files or records in civil and criminal sexual assault cases
- Community-based agencies being asked to give evidence to help establish a survivor's claim for damages in civil sexual assault cases
- Community-based agencies being asked to verify their actions or interventions in cases where former clients have committed suicide or harmed someone else; for example, where there has been a Coroner's Inquest or a negligence lawsuit by grieving friends or relatives
- High profile cases such as *R. v. Carosella* (1997) where agency record keeping practices and the shredding of client records have been reviewed by the courts
- High profile cases where agency staff have successfully claimed that client records should be privileged or kept confidential
- The need, indicated by many service providers, to encourage consistent record keeping practices across the province

Records management guidelines can help agencies and service providers handle and process information in a way that respects the client's confidentiality and acknowledges the organization's need to document the services it provides.

## **In What Ways Can Record Keeping Help Community-Based Agencies?**

Appropriate record keeping can:

- Document the fact that the client (or their legal guardian) provided informed consent to receive services, particularly in cases involving child clients
- Ensure that client records contain enough information to satisfy the internal service and administrative requirements of the agency
- Help ensure that the content of client records respects confidentiality to the best extent possible given that in certain cases there may be a legal requirement to disclose to unsympathetic third parties
- Help ensure that clients have adequate information about the services being provided
- Document the fact that exceptions to the principle of confidentiality were explained to the client
- Help agency staff be accountable to their clients
- Help agency staff review the effectiveness of a counselling plan or other intervention over time

- Help agency staff consult or receive supervision regarding a particular case (a review of the record may provide important information to the supervisor which assists this process)
- Help to ensure consistent services are provided in cases where the file is transferred to another staff member
- Assist the agency in providing information and support on behalf of the client e.g., for a Crime Victim Assistance claim or a claim for damages in a civil lawsuit for sexual assault
- Document the actions of agency staff in cases where it is alleged that they were negligent or acted improperly
- Help develop and implement a safety plan for the client
- Help agency staff avoid allegations that they implanted “false memories” of sexual abuse
- Help board members when they are faced with legal liability for actions of their staff
- Document that agency staff have satisfied legal or statutory reporting requirements such as the requirement to report suspected child abuse under the *Child, Family and Community Service Act*
- Help agency staff and board members decide on an appropriate retention period for client records

If you or your agency are faced with a lawsuit related to your handling of a client’s case, or you are asked to appear as a witness or provide evidence in a criminal or civil case, consult with a lawyer. If cost is a concern, consult with Legal Aid, your contracting ministry or request that a private lawyer volunteer time for your agency or give a discounted rate.

*The Ministry of Public Safety and Solicitor General funds legal representation for any survivor whose records are subject to an application for production in sexual offence proceedings under the Criminal Code. The ministry will also provide similar funding for legal representation for community-based survivor services in certain circumstances. In order to apply, agencies can contact the Legal Services Society.*

## Besides These Guidelines, What Other Sources of Information Should I Consult?

### *Laws and Policies*

Legal and policy frameworks in this area are evolving rapidly. Agency staff responsible for policy must update themselves, their coworkers and board members regularly, particularly in the following areas:

- BC's *Personal Information Protection Act* [provides privacy protections which apply to most businesses and non-profit organizations]
- BC's *Freedom of Information and Protection of Privacy Act* [deals with access and privacy issues related to records under the custody or control of public bodies]
- Canada's *Privacy Act* [contains privacy protections which apply to the RCMP and federally regulated businesses such as banks, railroads and telecommunications firms]
- BC's *Child, Family and Community Service Act* [Part 3 establishes reporting requirements for suspected child abuse. Part 5 deals with access and privacy issues related to records governed by the act]
- BC's *Infants Act* [Part 2 deals with a minor's consent to health care]
- Canada's *Criminal Code* [sections 278.1 to 278.91 deal with production of records in sexual offence proceedings]
- Supreme Court of Canada decisions interpreting criminal and civil law privacy protections: *R. v. Shearing*, (2002); *R. v. Mills*, (1999); *M(A.) v. Ryan*, (1997)
- Supreme Court of Canada decisions setting limits on cross examination of sexual assault complainants: *R. v. Osolin*, (1994) and *R. v. Seaboyer*, (1991)
- records management guidelines developed by other ministries which fund your agency
- The *B.C. Handbook for Action on Child Abuse and Neglect* [2003 edition is available on Ministry of Children and Family Development website]
- Ministry of Children and Family Development *Best Practice Approaches: Child Protection and Violence Against Women* May 2004 [deals with best practices for child protection social workers; available on Ministry of Children and Family Development website]

## ***The Personal Information Protection Act***

In January 2004, the *Personal Information Protection Act* (PIPA) came into force in BC. It is a provincial law that establishes rules about the collection, use or disclosure of personal information. PIPA contains safeguards designed to protect the privacy of personal information which is collected by private businesses and non-profit organizations.

### **Which Agencies or Programs must follow PIPA Rules?**

PIPA applies to all private sector organizations in BC including non-profit organizations. PIPA does not apply to an agency or program already covered by BC's *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Whether or not your program is covered by FOIPPA, rather than PIPA, will depend on the wording of your contract with the funding ministry. If the wording of the contract suggests that your records are under your agency's or program's "custody or control", then PIPA rules apply. If you are uncertain about this, you can refer to page 8 of these *Guidelines* for further information including an overview of the factors affecting who has "custody or control". You may also wish to contact the contract manager at your funding ministry.

To date, wording of the community-based victim assistance program and stopping the violence program contracts have been interpreted in the field as the programs having "custody or control". This means these programs would be governed by PIPA. As contract wording can change from year to year, we recommend that you review the contract terms again during each upcoming fiscal year. Under FOIPPA it is the wording of the funding contract in force when the records were created that determines whether that act applies.

If your agency runs more than one program, then some records may be governed by PIPA and some by FOIPPA. Each individual contract should be reviewed to determine who has "custody or control" of the records.

### **Consent Requirements under PIPA**

If covered by PIPA, your agency must obtain consent before collecting, using or disclosing personal information.

### **Personal Information collected before PIPA was in effect**

PIPA regards information collected before January 1, 2004 to have been collected with consent but only for the purpose for which it was collected. You do not need to go back and get consent for clients who went through the intake process before the effective date, provided you are only using their information for its original purpose.

Only the “collection” process is grand parented. This means that PIPA *will* apply to how you *use, secure and disclose* the personal information that was collected before January 1, 2004. To satisfy PIPA, organizations should ensure that personal information collected before the effective date is only used and disclosed for purposes that a reasonable person would consider appropriate in the circumstances and that fulfill the purposes for which it was originally collected. In terms of client information, if your agency has been following the *Records Management Guidelines*, you will already be in compliance.

### **Release of personal information to third parties under PIPA**

Defendants or offenders sometimes request records or personal information about the survivor from a victim-serving agency. They base their claim on the grounds that the record also includes information about them or their child and that therefore they are entitled to see it. In other cases, the offender simply wants to harass or intimidate the victim to discourage her from legal proceedings.

These *Records Management Guidelines* provide that, subject to certain limited exceptions, personal information should not be released to a third party without the client’s consent. PIPA also requires consent for information to be so released. In addition, PIPA sets out specific situations in which personal information must not be disclosed to *anyone*. These include situations where:

- disclosure would reveal information about another individual *(For example, if personal information in the victim’s file includes information she provided about the offender, then releasing this to the offender would have the prohibited effect of also revealing to him information about her.)*
- disclosure could reasonably be expected to threaten the health or safety of someone other than the person who made the request *(For example, releasing information about what the victim said to service providers might incite the defendant/offender to further acts of violence against her. This situation would involve some assessment of the degree of risk involved.)*
- disclosure would reveal the identity of someone who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of their identity. *(For example, the victim’s sister provides information about the offender which is included in the victim’s file and the sister does not wish her identity revealed.)*

In addition to the restrictions on disclosure already set out these *Records Management Guidelines*, agencies/programs should not release personal information in the above situations.

### **PIPA and Legal Proceedings**

These *Records Management Guidelines* deal with a number of situations in which legal proceedings are underway and third parties are seeking access to information contained in records as part of the proceedings.

PIPA does not limit information available by law to a party to a proceeding. Nor does PIPA override the *Criminal Code* or other federal legislation.

### ***The Freedom of Information and Protection of Privacy Act***

This Act applies to public bodies, including government ministries, and to some of the records held by community-based agencies contracted by government. Whether or not your program is covered by FOIPPA rather than PIPA will depend upon the wording of your contract with the funding ministry. If the wording of the contract suggests that your records are under your agency or program's "custody or control", then PIPA rules apply.

#### **Does FOIPPA Apply to Your Agency's Records?**

*The following factors may be considered to determine whether your records are under the ministry's custody or control:*

- *Is there anything in your agency's funding contract that specifies that the records are under the ministry's control?*
- *Does the ministry have a right under the funding contract to review the records which relate to the services being provided?*
- *Does the ministry have a contractual right to have a say in the content, use or disposition of the records?*
- *Were the records created by the ministry?*

### ***The Child, Family and Community Service Act***

Part 3 of this Act requires *any person* to report to the Ministry of Children and Family Development (MCFD) if they have reason to believe a child needs protection.

Less familiar is Part 5 of the CFCSA which deals with information and privacy issues. If your agency is or was once funded by MCFD, Part 5 of the CFCSA may

apply to records you have created to serve clients, such as counselling records or other ongoing service records. Check your contract language to provide clarification here. Amendments to CFCSA Part 5 came into force in January 2006. The result is that there is now greater consistency between information sharing practices under the CFCSA and FOIPPA.

### ***Accreditation Standards***

A number of agencies, particularly those who receive funding from MCFD, are considering accreditation or have already been accredited based on their implementation of specific standards. Adherence to these standards is monitored by external accreditation bodies, namely, the *Council on Accreditation for Children and Family Services (COA)* and *Commission on Accreditation of Rehabilitation Facilities (CARF)*. The COA and CARF standards include a number of references to records management and confidentiality.

In many cases, these *Records Management Guidelines* are already consistent with basic accreditation requirements. In other cases, the Guidelines are worded somewhat differently to take account of Canadian laws and recommended approaches based on long established local practice.

### ***Professional Standards or Codes of Ethics***

If you are a member of a professional association, such as the BC Association of Clinical Counsellors or the Canadian Art Therapy Association, you may be ethically required to follow certain practices regarding client confidentiality and records management.

### ***Your Contract with the Provincial Government or Other Funders***

Your contract should also be consulted. It may require specific documentation practices or the maintenance of certain client records.

If you need more information about either PIPA or FOIPPA, contact the Privacy Helpline at:

From Victoria: 250-356-1851

From Vancouver: 604-660-2421

Other areas: 1-800-663-7867 (ask for a toll free transfer to 356-1851)



## A. Overview of Basic Records Management Requirements

### Get Consent

Get consent for collecting, using and disclosing an individual's personal information. There are exceptions to this requirement including employee personal information, and information needed in an emergency. The *Personal Information Protection Act* (PIPA) considers consent to be given when a person, knowing the purpose of collection of their information, gives the information to you. Tell the person from whom the information is collected, either verbally or in writing, before or at the time of collection, why the personal information is needed and how it will be used. Programs using these *Records Management Guidelines* will already be in compliance. They only need to adapt their consent forms slightly to include consent to *collecting* personal information. (See Appendix II for a sample consent/confidentiality clause.)

### Decide whether consent will be oral or written

Consent should be in a form appropriate to the type of personal information involved. Getting express written consent is often desirable. Consider what is reasonable for the individual, the circumstances of collection, your proposed uses or disclosures of the information, the sensitivity of the information and whether you may need to prove that the person consented. These *Records Management Guidelines* recommend that written consent be included as part of the intake form.

### Determine the scope of information you need

Collect personal information only for reasonable purposes and collect only as much as is reasonable for those purposes. Collect information directly from the individual unless PIPA permits otherwise or the person agrees to someone else giving the information to you. Programs using these *Records Management Guidelines* will already meet this requirement.

### Obtaining personal information about employees

Employees include volunteers, students and board members. You can collect, use and disclose employee information without consent if it is reasonable for starting, managing or ending the employment relationship.

### **Set limits on the use of the information you have collected**

Use and disclose the information only for the purpose for which it was collected unless the person consents or PIPA permits release without consent. This is consistent with these *Records Management Guidelines*.

### **Provide access to the person the information is about**

On request, provide an individual with information about the existence, use and disclosure of the personal information you have collected about them. If you receive such a request, respond within 30 days. Provide the individual with access to the requested information unless PIPA excuses you from giving access. For example, you can refuse access where release of the information would harm an investigation or where disclosure would harm someone else or would disclose someone else's personal information. On request, correct information that is inaccurate or incomplete. Access to personal information by the person who provided it is also addressed in these *Records Management Guidelines*.

### **Keep records secure**

Ensure that the personal information you have is secure. Recommendations contained in these *Records Management Guidelines* can be followed here.

### **Be able to justify how long you keep the information**

PIPA requires that records be kept for a *minimum* of one year. After that, keep the information for only as long as is reasonable for business or legal reasons. If you are using the retention period recommended in these *Records Management Guidelines*, you won't need to change your policy. Use care in disposing of or destroying information.

### **Develop a personal information or confidentiality policy and designate someone as a Privacy Officer**

Designate someone in your organization who is responsible for ensuring your organization complies with PIPA. That person is responsible for developing and implementing a privacy policy and making sure it is working effectively. You can use these *Records Management Guidelines* as your agency privacy policy. Make information on your management of personal information available on request.

### **Respond to concerns**

If someone complains about how your organization handles personal information, try to resolve the complaint quickly and fairly. (Office of the Information and Privacy Commissioner for British Columbia, 2004)

## **B. Basic Privacy Principles**

1. The safety and well-being of clients including women, children and other survivors of violence is the primary obligation of agency staff and board members.
2. Agencies are primarily accountable to the people they serve.
3. Clients have the right to be informed regarding the nature of the service they receive and the contents of any documentation of that service. They have the right to request correction of errors or omissions contained in the personal information they have provided.
4. Agency staff should inform clients of the general limits to confidentiality at the time the person first requests service.
5. Agencies will protect the privacy of all personal information regarding their clients. Such information will only be collected and disclosed with the client's consent or where there is a legal obligation to release it.
6. Agency staff may disclose client information to other staff who, by virtue of their responsibilities, have a need to know.
7. Client information should only be disclosed to board members in exceptional circumstances where there is a critical need for them to know, for example, where they are involved directly in staff supervision.
8. Information should be collected from the individual concerned, e.g. the client, unless she authorizes collection from another person.

## **C. Goals of the Records Management Guidelines**

1. To build trust between clients and service providers by outlining record keeping practices which ensure clients are informed of the practical and legal limits to privacy.
2. To help service providers understand the practical and legal limits to privacy so they are able to inform clients of these limits before a crisis develops.
3. To assist community-based agencies if their staff are required to disclose client records in the context of a civil or criminal prosecution.
4. To ensure that if client records are required to be disclosed pursuant to legal requirements, that client confidentiality is protected to the best extent possible.
5. To assist agency staff to maintain credibility and refresh their memories if they are required to appear as trial witnesses and be cross-examined by defence lawyers in the context of a prosecution some time after the agency service was provided.
6. To help ensure that agency and staff record keeping practices are consistent with legal, professional, and ethical requirements.
7. To reduce the agency's risk of legal liability.
8. To assist agency staff and board in the development of their own internal record keeping policies.

## D. Records Management Guidelines

### I. Physical Security of Client Records

#### 1. *What steps can I take to protect the physical security of client records?*

##### Guideline

- 1.1 Client records, including computerized records, should be protected from unauthorized access, duplication, or theft.

##### **Effective Storage Practices**

- a) *Lock filing cabinets and if possible limit access to areas where records are stored. Case records should not be left in a public area such as on carts in hallways on desks or in insecure areas. When not being used, files should be returned to a secure area.*
- b) *If your agency is in a high risk area for theft, have a security system in place.*
- c) *Maintain control over the storage, availability and use of all computer storage media including disks, tapes, etc.*
- d) *Limit access to computer systems or networks which contain client records. Store paper records in locked and fireproof or fire resistance cabinets.*
- e) *Keep records, whether paper or computer disks, on the agency's premises or advise staff to keep records secure if they are taken off the premises. Establish mechanisms to ensure that records, whether paper or electronic, can be located at any time.*
- f) *Ensure confidentiality measures are in place when storing backup disks and tapes.*

## **2. *What steps can I take to protect the physical security of client records outside the office?***

### **Background**

If you are working with personal information while travelling or while outside your office, chances are greater that information may be lost or privacy compromised. Personal information means information that would identify a particular person. For example, it includes information such as name, home address and phone number, medical information, marital status, and education.

Some basic precautions can help prevent the privacy of this type of material from being compromised.

### **Guidelines**

- 2.1 Agency staff should avoid travelling with client personal information unless taking it along is absolutely necessary.
- 2.2 If staff do take client personal information with them, they should take the least amount that is needed.
- 2.3 If the necessary records are too voluminous to carry, they should be sent to the staff member's destination by a trustworthy courier.
- 2.4 If possible, only copies of any documents or records should be taken, leaving original documents in the office.
- 2.5 While away from the office, agency staff should keep laptops and other electronic devices containing client personal information (including Palm Pilots and Blackberries) with them.
- 2.6 If it is necessary to leave a laptop or other device unattended, it should be left in a location secure from theft, loss and unauthorized access to client personal information.
- 2.7 Client personal information in any form should be kept under the control of agency staff, including during meals and other breaks. If this is not possible, personal information should be stored in a secure location such as a locked file cabinet, room or desk drawer. Personal information should not be left in plain view or unattended in an insecure place such as an unlocked office or meeting room.
- 2.8 Staff should avoid using cell phones to discuss personal information. Cell phone conversations can be easily overheard and intercepted.

- 2.9 Staff should avoid discussing client personal information in public, including buses, commuter trains, airplanes, restaurants or on the street. If it is necessary to do so, staff should ensure that others cannot overhear. (Office of the Information and Privacy Commissioner for British Columbia, 2005)

#### **Effective Documentation Practices**

- a) *Restrict access to your laptop and other electronic devices by having them password protected.*
- b) *Also use a password to restrict access to client personal information which is stored on a storage device such as a floppy disk, CD or USB storage drive, rather than the hard drive of your laptop or home computer.*
- c) *Encrypt electronic records of sensitive personal information when they are taken away from the office.*
- d) *While away from your office, keep storage devices containing copies of personal information in a locked briefcase or other container that is kept with you. If you must leave a storage device somewhere, do so in a location secure from theft, loss and unauthorized access to personal information.*
- e) *When working outside the office, log off or shut down your laptop or home computer when you're not using it. Set the automatic logoff to run after a short period of idleness.*
- f) *Do not share with other individuals, including family members and friends, a laptop or home computer which is used for working with personal information.*
- g) *Avoid viewing personal information in public, including while travelling on airplanes, trains, buses and public transit. Do so only if you absolutely must and take precautions to ensure no one else can view the personal information. For example, your laptop screen should not be viewable by fellow passengers. Set your laptop's screensaver to run after one minute of idleness. Also consider installing a privacy screen filter on your laptop screen, to hinder viewing of the screen from an angle.*
- h) *Only store personal information in a car if there is no other option. If you must store information in the car, lock it in the trunk. Try to park the car in a secure location and leave the material in the car only for short periods. If you must travel regularly with personal information, install a car alarm.*
- i) *When working at home, store personal information in a locked filing cabinet or desk drawer when not being used. The filing cabinet or desk should only contain work-related records and no one else should have access to it.*

- j) Avoid storing personal information on the hard drive of your home computer. If any personal information is stored on hard drives, it should be encrypted and password protected.*
- k) Ensure your home computer has effective internet security measures such as anti-virus software and firewalls.*
- l) If you telecommute from home, your employer should provide you with a separate phone line and password-controlled voice-mail box.*
- m) Avoid sending client personal information by email or fax from public locations, including internet cafes. If it is absolutely necessary to do so, see section II, question 5 for tips on email and faxing.*
- n) Fax or photocopy personal information yourself when working outside the office. If you have to ask someone else to do this for you, you should be present and be sure to collect back the material that has been faxed or copied.*
- o) Upon returning to the office, return records to their original storage place as soon as possible or destroy the copies securely. Any working notes you created during the trip that contain client personal information should also be stored in a secure environment as soon as possible.*
- p) If personal information is stolen or lost, immediately notify your supervisor and the person responsible for privacy compliance in your organization, file a police report, and notify the Office of the Information and Privacy Commissioner for BC. Your organization or public body should consider notifying the individuals whose personal information has been stolen or lost, telling them the kind of information that has been compromised and steps that are being taken to recover it.*

## II. Using Information Technology to Store or Transmit Personal Information

### 3. *How can I protect personal information that is stored on a computerized database?*

#### Background

Many agencies now store client files on computer. Others may be making this change to satisfy accreditation requirements. It is important to keep in mind that accreditation bodies may recommend or require the use of particular databases for storing records. They will also require basic security features such as the use of passwords, firewalls and up to date anti-virus protection.

#### Guidelines

- 3.1 Access to client personal information contained on computer databases should be password controlled. In other words, only staff that require access to that information to perform their day to day duties, should be able to access the information by using their own password.
- 3.2 All computers should have up to date anti-virus protection and firewall protection.
- 3.3 With larger multipurpose databases, software should be designed so that different staff members only have access to parts of the database that relate to their duties. For example, administrators should not have access to counselling files or client intake records containing personal information.
- 3.4 The agency should have a policy on the use of laptops and storage of personal information on laptops. (See Section I)
- 3.5 The agency should have a system for regular backup of computerized records. Electronic backup should be maintained off premises.
- 3.6 The agency should have a disaster recovery strategy for personal information which is lost or damaged. For example, a computer virus, theft of the computer or physical damage to the office environment, such as fire or flood, can result in computerized data and privacy being compromised.

### **Effective Storage Practices**

- a) *If your office has a computer network, ensure that personal information is stored on a central server if possible and not at the individual workstations. That way, if someone steals the computer, they get access to the computer hardware but no access to data.*
- b) *If your office stores personal information on a server, ensure that the server is located in a secure environment. (See also under Section I)*
- c) *Where possible, use databases that allow for the creation of audit trails. Audit trails allow someone to check the system to find out who has updated a particular file and on what date.*
- d) *Certain data gathering tools, particularly software packages developed abroad, may need to be adapted to meet local privacy laws and the particular needs of your program. For example, some packages automatically require collection of sensitive information (not required by your program) such as Social Security Numbers, as part of client intake. Whether using a database or an intake process which relies on paper files, only collect the information necessary to deliver your service and not more. (See also under Section III, question 8)*
- e) *Consider contracting with an electronic security consultant to conduct a security audit of electronic information systems in your agency. This might be an option if you have a serious security breach in a high risk situation, for example, there is evidence that an abuser has gotten unauthorized access to a client database and is trying to locate the current whereabouts of the woman he has abused in order to abduct her or commit other acts of violence.*

## **4. How can I protect personal information when using voice mail?**

### **Background**

Voice mail is a useful tool for sending and receiving detailed phone messages. With appropriate safeguards in place, the confidentiality of voice messages, and the privacy of those of whose personal information is sent by voice mail, can be protected.

## Guideline

- 4.1 Agencies should pursue technological methods to protect voice mail privacy such as the use of password-controlled voice-mail boxes. (Office of the Information and Privacy Commissioner/Ontario, 1996)

## 5. *How can I protect personal information when using faxes and email?*

### Background

It is all too common for emails or faxes to be sent to the wrong person. All it takes is the push of a single button or key. Managing the flow of personal information by fax and email remains a challenge, for both large well financed organizations like banks, and for smaller agencies like doctor's offices.

In BC, both the *Personal Information Protection Act* (PIPA) and the *Freedom of Information and Protection of Privacy Act* (FOIPPA) require that steps be taken to reduce the risks associated with faxing or emailing personal information. The Guidelines and Practices in this section apply to faxing and emailing "personal information". Personal information means information that would identify a particular person. For example, it includes information such as their name, home address and phone number, medical information, marital status and education.

### Guidelines

- 5.1. Agencies should avoid faxing or emailing sensitive personal information such as health or financial information or information about someone's psychosocial history. This type of information should only be faxed or emailed when it is absolutely necessary to send it at once and faxing or emailing is the only timely way to do so. Otherwise, send such information by hand.
- 5.2 If it is necessary to fax or email sensitive client personal information, agency staff should consider phoning first to:
- confirm that the intended recipient is actually the right person to receive the fax
  - confirm that the recipient will be there to receive the fax, and
  - confirm the recipient's fax number
  - ask the intended recipient to call to confirm receipt of the fax.
- 5.3 When faxing or emailing sensitive client personal information, agencies should consider using unique identifiers or codes such as numbers or letter names to protect the identity of the individuals involved. (Office of the Information and Privacy Commissioner for British Columbia, 2005)

### **Effective Transmission Practices**

- a) *Set rules about the types of information that can be faxed or emailed to and from your organization. Check regularly to make sure your employees are following the rules.*
- b) *Where possible, make one person responsible for sending and receiving personal information, especially faxes. Train that person in proper procedures and ensure they're aware of the legal duty to protect personal information.*
- c) *Locate any fax machine used to send or receive personal information in a place that prevents unauthorized persons from seeing faxed personal information.*
- d) *Limit access to the fax machine.*
- e) *Always use a fax cover sheet. It should clearly identify the sender (with call-back particulars for the sender) and the intended recipient. It should specify the total number of pages being sent. The cover sheet should also contain a confidentiality clause saying that the faxed material is confidential, is intended only for the named recipient, and is not to be disclosed to or used by anyone else. The confidentiality clause should ask anyone who receives the fax in error to immediately notify the sender and then return or securely destroy the personal information, as the sender requests.*
- f) *Before you fax personal information, confirm that the agency you are sending it to has taken precautions to protect the personal information when they receive it. (See page 23 for specific tips on precautions to take upon receipt.)*
- g) *Before faxing or emailing personal information, confirm that you have the correct fax number or email address for your intended recipient.*
- h) *If you use pre-programmed fax numbers, regularly check to ensure that the fax numbers are correct.*
- i) *After you have dialled a fax number, carefully check the number you dialled before sending the fax. This also applies when using pre-programmed fax numbers.*
- j) *Check each fax confirmation report at once to be sure the fax went to the right place. Also check the number of pages actually transmitted and received.*
- k) *If you've designated one person to send and receive faxes, have that person check each day's fax history report for errors or unauthorized faxing. Keep fax confirmation sheets and fax history reports long enough to do this.*

- l) Retrieve material you are sending by fax from the fax machine as soon as it has been processed for sending. When you're faxing sensitive client personal information, stay by the machine at all times during faxing.*
- m) If you receive a fax in error, promptly notify the sender and return or destroy the information, as requested by the sender.*
- n) When receiving a fax, check the number of pages you've actually received against the number of pages noted on the fax cover sheet. Check to ensure you haven't received any material you shouldn't be getting. If you do receive material you shouldn't be getting, promptly notify the sender and return or destroy the information, as requested by the sender.*
- o) If your fax machine has a feature that requires the recipient to enter a password before the recipient's machine will print the fax, use that feature for sensitive client personal information at least.*
- p) If you fax sensitive personal information, consider using secure fax machines that employ encryption or other security measures that limit access to the stored information.*
- q) If you use computers for sending, receiving or storing faxes, create appropriate computer directories and passwords so that faxes can only be sent, received and accessed by designated users, using confidential passwords. Before faxing personal information by computer modem, check that the recipient's computer is protected in the same way.*
- r) Do not make or keep more copies of faxed or emailed material than you truly need. Securely destroy extra copies.*
- s) If someone asks you to fax or email their personal information to them, explain how faxing or emailing risks their personal information being accidentally disclosed or deliberately intercepted by other people and get their consent before you fax or email their personal information.*
- t) If personal information is mistakenly faxed or emailed to the wrong person, or is otherwise compromised through faxing or emailing, and you can't get the information back, notify your supervisor and the person responsible for privacy compliance in your organization and notify the BC Office of the Information and Privacy Commissioner. Promptly notify the individual(s) whose personal information has been compromised, telling them the kind of information that has been compromised and steps that are being taken.*
- u) Never use email distribution lists to email personal information.*

- v) *Remember, email is like sending a postcard. The content of an email can be read during its transmission. When emailing personal information—especially sensitive information such as health information—you should encrypt it so only the intended recipient can read it. Free or low-cost encryption software is readily available on the Internet or through retailers.*
- w) *For each email mailbox used to send or receive personal information, establish a secure password known only by the employee authorized to access that mailbox. In case of a common mailbox, only provide the password to authorized employees.*
- x) *Consider deleting emails from your computer a reasonable time after successful sending and retain only paper copies.*

### III. The Intake Process

#### 6. *How can I protect the identity of potential clients?*

##### Background

Even the fact that a client sought help from a community-based specialized victim assistance program, transition house or other program, may put her in jeopardy if this information is inadvertently disclosed:

- If personal information is mailed to your client with agency letterhead on the envelope, and she lives with the offender, he may open the mail and review private material. This could include sensitive information which he might otherwise need a court order to get access to. This information might be used to attack the woman's credibility in court.
- If the woman once stayed at a transition house and is later involved in a custody dispute, the fact that she lived at the house with her children may be used to suggest she is not a capable parent.
- Where the situation involves a violent offender and he finds out the woman is living at a transition house or receiving support services, this can put agency staff and the victim at further risk of harassment or violence.

##### Guidelines

- 6.1 The agency should not disclose the identity of clients who have requested agency services unless the client has consented or the agency is legally required to do so.
- 6.2 The principle of non-disclosure applies to board members and all staff including supervisory (employed or contracted) and administrative support personnel, and volunteers.
- 6.3 The requirement of confidentiality extends to all records created or maintained by the agency including intake records or forms filled out by potential clients.
- 6.4 The obligation to maintain confidentiality continues indefinitely after the agency no longer has contact with the client and the file is closed.
- 6.5 The obligation to maintain confidentiality continues indefinitely after a staff, volunteer, or consultant ceases to be connected to the agency.

### **Effective Documentation Practices**

- a) *Establish confidentiality policies which spell out clearly who does and does not have access to what kinds of information and why the information is needed. For example, an in-house policy could set out safeguards regarding access to client information by clinical supervisors and the rare circumstances under which a board member would have access to client information.*
- b) *When staff or volunteers are first hired or taken on by the agency, provide them with formal orientation on the principles of confidentiality and related policies and document the fact that you have provided this training*
- c) *Obtain oral consent from the potential client before intake forms are mailed, emailed or faxed out to her or she is contacted at home and document the fact that you have obtained this consent.*

## **7. Who prepares the Intake Record?**

### **Guidelines**

- 7.1 Whenever possible, intake records should be prepared by staff who have received training or orientation on the principles of confidentiality.
- 7.2 Whenever possible, paid agency staff should review records prepared by volunteers.

## **8. What client information should I include in the Intake Record?**

### **Background**

Agencies provide a variety of services including justice system information and practical support, court and witness preparation, emotional support, counselling or emergency shelter. At the intake stage, the type of client information collected and the process followed will vary depending upon the specific service being requested. Intake will generally include some type of screening to determine whether the client is safe and eligible for assistance.

Agencies seeking accreditation may be asked to conduct “intake assessments” in order to satisfy accreditation standards. For example, Council of Accreditation Standard S12.2.03 requires the organization to conduct a full assessment with client including:

- A description of the crisis and related risks

- Relevant social, emotional, educational, health, employment and family histories including abuse and exploitation
- Evaluation of the impact of the problem on children. (Council on Accreditation for Children and Family Services, 2001)

General standards sometimes envisage the gathering of detailed information as part of this type of intake process, such as a medical and psychosocial history of the prospective client. This type of information may not be appropriate as part of initial intake if the client is only requesting court accompaniment or information about the justice system.

Whether the agency is attempting to satisfy standards set by an external accreditation body, or developing its own in-house policy regarding intake, certain basic principles apply. Only information necessary to provide the requested services should be collected. Also, the prospective client's consent should be obtained before any information is gathered and before it is used or released.

If the agency is in the process of accreditation, it may need to consider negotiating with the accreditation body to ensure that intake forms are tailored to meet the information and service needs of the specific program and the privacy needs of the specific client group. Certain standards allow the organization to adjust the intake/assessment process to meet specific service needs if the organization provides a written rationale. (Council on Accreditation for Children and Family Services, 2001)

### Guidelines

- 8.1 Agency staff should only collect information that is necessary to determine the appropriate service and to deliver the specific service being requested. (See Appendix II for sample clauses which can be adapted for use in an intake form)
- 8.2 The agency should collect only the necessary information *at the time* it is needed to deliver the service. Some multi-service agencies use a generic and secondary intake form. The generic form requests only basic information necessary to determine which service the client requires. Once the client is referred to that service, the secondary intake form requests information needed to effectively deliver that service.
- 8.3 Agency staff must obtain the prospective client's written consent before collecting any personal information about her.
- 8.4 Agency staff should explain how they intend to use the personal information which is being collected and must obtain the client's written consent to use the information in this way.

- 8.5 Agency staff should create a written timeline outlining approximately how long it will take to complete intake/assessment and deliver services.
- 8.6 If the prospective client is eligible for services, agency staff should obtain her written consent to receive specific services and inform her if delivery of services will be delayed because there is a waitlist.
- 8.7 If the prospective client is not eligible for services, agency staff should document any referrals made or information provided on other suitable agencies or programs.
- 8.8 The agency must designate someone responsible for privacy compliance. This person's title and contact information should be provided to the client either at intake or on request.
- 8.9 In general, the person being provided with service or their legal guardian should be the primary source of information about that person. In some circumstances agency staff might consider using collateral sources of information. For example, if immediate safety concerns are an issue, agency staff should consider whether coordinating with other involved agencies is necessary to develop an effective safety plan. For example:
- Police or Court services may have critical information about the existence of protection orders with conditions restricting the abuser's access to the victim or his use of firearms.
  - Corrections may have information about his pending release dates from custody.
  - Ministry of Children and Family Development personnel may have information about measures in place to protect any children involved.

Coordinating with other agencies can help to identify risk factors and find ways to minimize them.

- 8.10 In general, any information sharing with other agencies should be done with the client's consent. (For more information on practices associated with information sharing with third parties, see: Part V question 28)

8.11 The agency should document any actions taken in response to identified safety concerns. The relevant COA standards for example, include the following types of action:

- an initial screening of further safety risks to the woman and other family members
- an assessment of the woman's immediate needs including medical and dental care, legal assistance, food, housing and clothing
- appropriate referrals (Council on Accreditation for Children and Family Services, 2001)

### **Effective Documentation Practices**

a) *At the intake stage, document:*

- *any immediate safety concerns*
- *information necessary to determine eligibility for service*
- *any referrals made*
- *the immediate information and practical support provided*
- *the intended plan of action (including an immediate safety plan if necessary). (See Appendix III for information on SARA and B-SAFER, two risk assessment tools used by Probation and Police.)*

b) *If the client is involved in a violent relationship, has been sexually assaulted, or otherwise fears for her safety, collect and document information necessary to develop an immediate safety plan. The following kinds of questions should be asked:*

- *Where does the offender live?*
- *Does he have access to her?*
- *Does he know she is seeking services such as emergency shelter or counselling?*
- *Would he be able to determine the location of a Transition House through his work (e.g. is he a cab driver)?*
- *What is his history of violence?*
- *Has a protection order been issued?*
- *Has he made threats?*
- *Are children at risk?*
- *Does he have a mental health problem?*
- *Does he own or have access to firearms/other weapons?*
- *Is it safe to contact her at home?*

c) *If the prospective client is eligible for service, her written consent for services should be obtained.*

- d) *If the client is a child (under age 19), determine who has the legal right to enter into the contract of service and obtain the written consent of that person. (See Section IX of these Guidelines for information on consent issues related to child clients.)*
- e) *If the client or their representative has difficulty understanding a written consent form, obtain oral consent and document the fact that you have done so.*
- f) *On intake forms, ask specific yes and no questions whenever possible. Avoid the use of open-ended questions. Consider having agency staff fill out the form rather than having the client do so herself.*
- g) *Use discretion when gathering and recording the following information:*
  - *family, medical or psychiatric history, or*
  - *drug or alcohol use.*

*Some agencies use a checklist. The checklist indicates whether certain issues have been addressed, for example, the need for a referral, but does not include detailed psychological information about the client.*

*If the client is being provided with emergency shelter at a Transition House, it may be necessary to document information about current medical conditions or medications in order to ensure that appropriate steps can be taken in a medical crisis or to ensure safe storage of medications. Again, a checklist approach is used by some agencies with the checklist indicating that the issue of medical conditions or medications had been addressed.*

- h) *Have the intake record specify which type of service the client is requesting and has consented to, for example, criminal justice system information and practical support, witness preparation, emotional support, crisis counselling, individual counselling, group counselling, or emergency shelter.*
- i) *Have the intake record indicate whether the client has reported the assault or abuse to police or whether she is involved with any pending legal proceedings related to the violence she suffered.*
- j) *Have the intake record outline in writing, the limits to client confidentiality. (See question 12 for more information.)*
- k) *Have the intake record dated and signed by the client or read it out, have her summarize its contents and document the fact that you have done so.*
- l) *Have the intake record include an agency waiver of liability developed in consultation with a lawyer.*

### **Coordinating the Information Flow in High Risk Cases**

- *System-based agencies such as Police and Crown have limits on what information they can share with the victim.*
- *Exceptions generally apply in high risk cases.*

*To avoid confusion in a crisis, consider developing local protocols with other agencies to guide information sharing and safety planning.*

*Consult with the BC/Yukon Society of Transition Houses and the BC Association of Specialized Victim Assistance and Counselling Programs as they may be able to provide information on province-wide information sharing protocols.*

*Information on safety assessment tools can be obtained from the Ministry of Public Safety and Solicitor General, Victim Services and Community Programs Division and from the BC Institute Against Family Violence.*

### **Intake Forms: What to Include**

*Ask: What specific purpose is being served by the information being collected?*

*The intake form should be designed accordingly.*

*Intake information can:*

- *establish whether the client is safe*
- *determine eligibility for service*
- *determine whether legal proceedings are underway or expected*
- *determine the client's readiness for a particular type of service*
- *assist in the development of a service plan, including consideration of any special needs*

**9. How should consent to services be documented where the prospective client does not speak or read English?**

**Guidelines**

- 9.1 If the prospective client has difficulty understanding a written consent form because English is not their first language, obtain oral consent and document the fact that you have done so.
- 9.2 If the prospective client does not understand enough English to be able to provide oral consent, involve an interpreter. Have the interpreter sign a confidentiality agreement and document the role the interpreter has played.

**Effective Documentation Practices**

- a) Consider translating agency intake forms to reflect the make up of the community being served.
- b) Consider providing training on the need for safety and confidentiality for those you intend to use as interpreters.

**10. How should consent to services be documented where the prospective client does not have the mental capacity to make decisions about their care?**

**Background**

In this situation your prospective client will likely have someone who is empowered to act as their legal representative. This is the person who should sign any agency consent forms. The legal representative could be:

- a committee appointed under the *Patients Property Act*
- a representative authorized to make decisions pursuant to a representation agreement made under the *Representation Agreement Act*

The Guidelines in this section apply in situations where the prospective client is an adult. If the person is under 19, please refer to Section IX.

## Guidelines

- 10.1 If the prospective client lacks the capacity to consent to services, determine who has the legal authority to enter into the contract of service.
- 10.2 Request copies of the documents authorizing the legal representative to make decisions on behalf of your prospective client.
- 10.3 Obtain the written consent of the legal representative.

## ***11. How might the Intake Forms address the needs of clients who face particular discrimination?***

### **Background**

This is a sensitive area. Collecting information about someone's unique personal characteristics (such as their racial or cultural background) can help agency staff design an appropriate service plan. It can also help ensure the person seeking service is referred to an appropriate program designed to meet their specific needs. It may also be important to be aware of particular physical or health related needs in the case of intake for clients with physical or mental disabilities.

On the other hand, collecting this type of information can be very problematic. It can have the unintended consequence of stigmatizing the person seeking service or putting her at greater risk, particularly if the information must later be released to unsympathetic third parties.

In the justice system context, it is also important to consider historic and current day concerns about racial profiling. ("Concerns About," 2005) Based on their own past experiences, certain groups may justifiably assume that information about their personal characteristics will be used inappropriately by service providers to fit them into a predetermined category rooted in stereotype.

The needs of funders and accreditation bodies must also be considered. Funders may want to know the makeup of the clients you serve. This information might be used by them to show a need for more program dollars to serve a particular group. Some accreditation bodies have specific standards which apply to intake or assessment of people with special needs. For example, the Council on Accreditation standards on intake, assessment and service planning requires that:

“Each assessment appropriately considers unique personal characteristics that shape service approaches, including aspects of the person’s racial, ethnic and cultural background and the need for special service approaches as a result.” (Council on Accreditation for Children and Family Services, 2001. p. G8-5)

### **Guidelines**

- 11.1 General guidelines regarding intake apply.
- 11.2 Ensure the prospective client knows about your policy regarding confidentiality and release of information to third parties before you collect any information about personal characteristics.
- 11.3 Invite the prospective client to inform you about any special needs that they have that might be pertinent the service you are providing and that they feel you should know about. Document that you have done so.
- 11.4 If the prospective client identifies any special needs or they are otherwise identified through the intake process, document any referrals made or other actions taken to address those needs.
- 11.5 With respect to prospective clients who may have physical or mental disabilities, identify and document health and safety issues relevant to the services being requested and document the possible need for additional support or reasonable measures to achieve accommodation.
- 11.6 Consider working with community leaders representing the groups involved to identify ways to design the intake process so as to balance need for safety and health related information with the need to respect the dignity and privacy of the prospective client.

## **12. *How and when should I advise agency clients about the limits to confidentiality?***

### **Guidelines**

- 12.1 Agency staff should advise clients about the limits to confidentiality at the time services are first being requested.
- 12.2 If more than one type of service is being provided within the same agency, for example, emergency shelter in a Transition House and then individual or group counselling, the limits to confidentiality should be reinforced by agency staff at each stage, in this case at intake and again during the first counselling interview or session.

**Effective Documentation Practices**

- a) *Include in your agency's application for service or other intake forms, a statement that client information will be kept confidential subject to three exceptions:*
- *cases where a child is in need of protection as set out in section 13 of the Child, Family and Community Service Act;*
  - *cases where a client indicates that she is likely to be a danger to herself or others ;*
  - *cases where agency staff are compelled by court order to release client information. (See Appendix II for a sample consent and confidentiality clause for intake purposes; see also Section V of these Guidelines)*
- b) *Have the client sign the confidentiality agreement before the rest of the intake forms are filled out.*
- c) *Have the client sign a statement which says she has been informed of the exceptions to the basic principle of confidentiality. If the client cannot read a written statement, or otherwise has difficulty understanding its contents, read it out and explain it and document the fact that you have done so. If the client has difficulty understanding English, use an interpreter.*
- d) *If the client receives ongoing services, have the service provider remind her during the first face-to-face meeting of the limits to confidentiality that were outlined at intake. Give the client a written handout which summarizes the exceptions and outlines actions the service provider would take in those situations.*

**13. When should I open a client file?****Guideline**

13.1 A client file should generally be opened when:

- the client has requested a specific service
- her request has been documented as part of the intake record
- she is no longer on a waiting list, and
- she has begun to receive the services requested

or when:

- legal proceedings involving the client are underway or expected, or
- there is a greater than usual risk of agency liability in relation to a particular client

### **Effective Documentation Practices**

- a) *Open a file immediately if the intake records indicate a potential need to disclose client information, for example, where the client appears to be suicidal or a danger to others or where a child is in need of protection.*
- b) *Open a file immediately if the intake records indicate the client is already involved in or may soon be involved in legal proceedings related to the violence she has suffered.*
- c) *Establish a system which allows for retrieval of the file and for the link up or merging of the intake record and the service record if the client later receives counselling from your agency.*

## **14. What information should I include in the Service Plan?**

### **Background**

Service plans are an important part of the documentation process. Generally the plan is developed with the full participation of the client. A service plan can help the client better understand:

- the benefits and risks of different service options
- how the agency can support the achievement of desired outcomes

Some accreditation bodies, such as the COA, require the development of written service plans.

### **Guidelines**

- 14.1 The agency should develop a written service plan for each person, or group served.
- 14.2 The service plan should be based on the findings of the intake/assessment process and should include:
  - information about the services being provided and by whom
  - service goals and
  - desired outcomes
  - proposed strategies to address any special needs
  - approximate timeframes, with urgent or crisis cases identified for immediate attention

- 14.3 service plans, as well as significant changes made to the plans, should be signed by the client and/or her legal guardian

## **15. What if there is a question about whether privacy rules were followed?**

### **Background**

*The Personal Information Protection Act (PIPA)* provides that, if someone feels that the act was not followed, they can contact the Privacy Officer. Information about the Privacy Officer should be made available either at intake or on request.

PIPA requires organizations to designate someone to be responsible for privacy compliance. This person is responsible for managing and implementing your agency's privacy policy. You may wish to designate one person within your agency as the Privacy Officer and must list their title and contact information on your intake form.

If there is a complaint, the Privacy Officer should make every effort to deal with the matter quickly and fairly. While different personnel may be called upon to help investigate, it makes sense to have one person responsible for receiving all complaints and making sure they are dealt with in a timely way. If the Privacy Officer is uncertain how to address a complaint they can call the Privacy Helpline.

### **Guidelines**

- 15.1 Designate someone in your organization who is responsible for ensuring your organization complies with PIPA. That person would be responsible for developing and implementing a privacy policy and making sure it is working effectively.
- 15.2 Respond to concerns: if someone complains about how your organization handles personal information, try to resolve the complaint quickly and fairly.
- 15.3 If the concern cannot be resolved directly with the organization, let the client know that they may ask the Office of the Information and Privacy Commission for British Columbia to review the matter.

## **16. Do the same rules apply to information about agency employees?**

### **Guideline**

- 16.1 Under PIPA the agency may collect, use and disclose employee information without consent if it is reasonable for starting, managing or ending the employment relationship.

## **17. What about information provided to individuals doing contract work for the agency?**

### **Background**

PIPA rules also apply to personal information that your organization has transferred to a contractor for processing or information the contractor may have collected on your organization's behalf.

### **Guideline**

- 17.1 Agency contracts should clearly state what requirements must be met to comply with applicable privacy legislation and any policies the organization has developed to manage the personal information.

Sample contract language can be downloaded from the Ministry of Labour and Citizens' Services website at:

[http://www.msar.gov.bc.ca/foi\\_pop/privacy/Tools/PIPA\\_Tool\\_9.pdf](http://www.msar.gov.bc.ca/foi_pop/privacy/Tools/PIPA_Tool_9.pdf)

## **18. What about information collected for fundraising purposes?**

### **Guideline**

- 18.1 If your agency has a donor list that pre-dates PIPA and you want to contact these donors for an upcoming event you should use an opt-out clause: this informs donors of the intended use and gives them the option of being taken off the list.

#### **Possible wording for donor opt-out clause**

*Our agency/program has your contact information on a list of individuals and businesses who might be interested in information about our programs or in attending future fundraising events. Please advise us if you would like to be taken off this list by ticking the box below and sending it back to us.*

**Please take me off the list**

## IV. Documenting the Services Provided to Clients

### 19. Which records should be included in client files?

#### Guidelines

- 19.1 Generally records created or produced by agency staff belong to the agency. It is the agency's responsibility to maintain and manage these records. (In certain cases, an agency's funding contract may provide that the funding ministry has custody or control over the records. If so, the *Freedom of Information and Protection of Privacy Act* (FOIPPA) or the *Child, Family and Community Service Act* (CFCSA) may apply. If staff or board members are unclear as to whether either act applies, the funding ministry's Director/Manager of Information and Privacy should be consulted.)
- 19.2 Generally, materials or products such as diaries or artwork, created or produced by the client, are not the property or responsibility of the agency and should not be kept in the agency's file.
- 19.3 Written statements made to police are generally prepared by the client. Maintaining and managing these documents is not the responsibility of the agency.

#### Effective Documentation Practices

- a) *Retain in the client file, records produced or maintained by agency staff. This might include:*
- *intake records such as applications for service and intake forms or checklists, release of information agreements and consent forms*
  - *safety plans*
  - *service plans*
  - *Crime Victim Assistance Program forms*
  - *completed Victim Impact Statements*
  - *letters of advocacy written on behalf of the client*
  - *progress or case notes on individual sessions*
  - *reviews of progress made during sessions*
  - *completed assessments*
  - *miscellaneous reports*
  - *documentation of referrals made*

- *documentation of intervention in cases where there are legal reporting requirements (e.g., suspected child abuse, and/or client indicates she is a danger to herself or others)*
  - *termination summary notes*
- b) *Strongly encourage clients to retain personal materials they have created such as diaries, letters or artwork. These items should not generally be included in the client's agency file unless this is necessary in order for staff to effectively deliver the service.*

## **20. Are there situations where client records should be kept in more than one file or separated out within a file?**

### **Background**

Different types of service require the collection of different types of information. For example, information such as important court dates, appointments with police and Crown, and an outline of the status of the case, might be collected in order to provide justice-related information or practical support. On the other hand, more detailed information on the client's personal history might be collected in order to provide emotional support or counselling. Information related to any immediate health concerns or current medications might be required to safely provide emergency housing. If the client's file makes no distinction between information collected for the purposes of assisting with the court case, and information collected for other purposes such as providing counselling, then a court reviewing this file may interpret all the information as relevant to the legal process and may release it all to defence counsel. This may not be in the best interests of agency clients.

### **Guideline**

- 20.1 Whenever possible client files should be set up in such a way that information related to one type of service is clearly stored in a separate part of the file from information related to another type of service, e.g. the justice-related information should be kept separate from the counselling or service delivery information.

### **An Effective Documentation Practice**

- a) *If your client's records span the life of two or more funding contracts – which contain different language on the question of custody or control of client records – consider putting the records which are subject to the FOIPPA in a separate file or in a separate part of the same file from those which are not. Label the two (or more) files or parts of the same file accordingly.*

## 21. What Information should be included in the service record?

### Background

The service record's main purpose is to help staff do their job. The record can also help verify actions taken by staff or agencies in cases where questions are raised about their actions. Circumstances may arise which require that service records such as case notes, or the complete contents of a case file, be released to third parties whose interests may conflict with the client's or the agency's. Given this reality, every service record should be written so as to protect client confidentiality to the best extent possible. In preparing any part of the service record, be aware that documents cannot be edited or destroyed once they have been subpoenaed. Also be aware that certain aspects of the file, such as issues related to the client's memory, will be the subject of particular scrutiny if the file is disclosed in the context of a court case.

Some of the effective documentation practice items listed below refer to "case or session notes." Many of the steps listed, however, are equally relevant to other documents included in the service record or counselling file, such as assessments or termination summary notes.

COA standards have specific requirements related to case records. (Council on Accreditation for Children and Family Services, 2001) In general, the Guidelines and practice tips below are consistent with the COA standards. There are a few important exceptions. Certain COA standards contemplate more detailed information gathering than is recommended here. For example, COA standard G9.5.03 provides that, when necessary, the case record be supplemented with *psychological, medical, toxicological, diagnostic or psychosocial evaluations*. COA Standard G9.5.04 provides that case record entries be *specific and factual* and pertinent to the nature of the service.

These *Records Management Guidelines* suggest that service providers use discretion when gathering and recording sensitive information about the client's psychiatric and/or medical history and consider using a checklist approach as opposed to asking open ended questions. (See Section III, question 8) We also recommend that case notes be brief and succinct. (See Guideline 21.3 below) This approach is taken mainly because:

- Canadian privacy laws discourage the collection and recording of sensitive personal information unless it is absolutely necessary to provide a particular service.
- Litigation is fairly common in violence against women cases and agency records can sometimes be inappropriately used to discredit the victim. This can be very traumatic for agency clients.

Agencies can negotiate with accreditation bodies to help ensure that standards are applied and interpreted in a way that balances the need for information with the need for privacy.

**Guidelines**

- 21.1 The service provider should ensure that all recorded information is necessary to deliver the counselling service.
- 21.2 Entries should be relevant to the needs of the client.
- 21.3 Case notes should be brief. The service provider should note major topic areas discussed in the session, for example, “discussed feelings towards partner/spouse”. Details of any flashbacks or nightmares should be brief.
- 21.4 Generally, service providers should avoid documenting verbatim accounts of a session or putting quotation marks around a file note summarizing what the client said. If there is even a minor discrepancy between the quoted portion and what the client later reports to police or says in court, this can be used to challenge her credibility.
- 21.5 The service provider should document the methodology used. The service provider should record observations she has made being careful not to be subjective. Her case notes should not attempt to document historical or legal truth.
- 21.6 The service provider should be sensitive and use discretion when determining what information is necessary for the file.
- 21.7 Wherever possible, language used in case notes should reflect the client’s experience. Service providers should avoid terms which suggest moral judgment. Be aware of the ways case notes might be interpreted by uninformed or unsympathetic third parties.
- 21.8 Case supervision should be documented and if a case file review has been done it should include the supervisor’s signature.
- 21.9 Agency policy should provide for regular screening of the service record for transitory documents such as post-its, reminders to staff or general impressions. Provided there is a complete and accurate record somewhere in the file of the service which was provided, it is not necessary to keep every record which was created during the period of service. (See also under Section VI, Retention of Client Records)
- 21.10 Once a particular set of records or a file is subject to subpoena, no material of any kind should be removed from the file.

## Effective Documentation Practices

### The Format of Case Notes:

- a) *Keep case notes on a session-by-session basis.*
- b) *Write the case notes soon after each session.*
- c) *If handwritten case notes are later transcribed, the handwritten draft can be expunged from the file*
- d) *If the case notes were written during the session, this should be clearly indicated.*
- e) *Record the date of each session, sign and date the case note, and indicate who has written it.*
- f) *Develop a common format for case notes that all agency counsellors use.*
- g) *Develop a list of acceptable abbreviations used in the agency.*
- h) *Where information contained in the case file has been provided by a third party, indicate this in some way.*
- i) *Document or record on a need-to-know basis.*
- j) *Consider flagging or marking entries that may have legal significance.*
- k) *Write legibly and in ink.*
- l) *Prepare progress notes or summaries quarterly.*

### The Content of Case Notes

- a) *Be brief. Note the major topic areas discussed in the session, for example, “discussed feelings towards partner”. Be brief about details of flashbacks.*
- b) *Generally, avoid documenting verbatim accounts of the session.*
- c) *Document methodology used*
- d) *Avoid the use of guided imagery techniques or other interpretive techniques when working with someone who does not have complete memory.*
- e) *Avoid including your own subjective comments regarding the client’s behaviour or emotions.*
- f) *Avoid including information about third parties.*

- g) Do not use the case notes to make speculations about the client.*
- h) Do not use case notes to debrief or record your own emotional responses to the client or the case.*
- i) Document the conclusion of services on a termination form.*

## **22. What special confidentiality concerns arise in group counselling sessions?**

### **Background**

It is more difficult to maintain individual client confidentiality in a group setting. Also, it has been suggested by some – but not proven to be so – that a client’s recollection of past abuse might be influenced by the flow of information or images coming from other group members. For these reasons, special considerations arise in managing the documentation of group counselling.

### **Guideline**

- 22.1 Agency staff should obtain verbal or written agreement from those participating in group counselling that all matters discussed in the group will be kept confidential.

### **Effective Documentation Practices**

- a) Advise group members that aspects of their private lives may be revealed in the group and that there are no absolute guarantees of confidentiality in this situation.*
- b) Consider keeping a separate set of case notes for the group and for each individual member. The group record should not include information which will identify individual members of the group.*

### **23. What if the client indicates she may be a danger to herself or others or there is evidence of child abuse?**

#### **Background**

There is no requirement in law to report a potential suicide. However in cases where the client indicates she may be suicidal, and she then goes on to commit suicide, a failure to take appropriate steps to intervene may leave you and your agency open to civil liability. Aggrieved relatives, for example, may sue. They could allege that agency staff did not respond appropriately to indications of suicide or that the counselling process triggered the act.

Similarly, if you have reason to believe your client will physically harm another adult, there is no positive legal duty to report or warn others. If you make a decision not to disclose the danger, however, you may be leaving yourself or your agency open to a civil suit alleging negligence or a failure to exercise due care.

The *Personal Information Protection Act* (PIPA) and the *Freedom of Information and Protection of Privacy Act* (FOIPPA) allow information to be shared for health or safety reasons. This means that if you do share information about the risk your client poses, you will not be in breach of your legal privacy obligations.

Ethical guidelines or standards might also come into play in these situations. If you are a member of a professional body you may be subject to ethical practice codes which address potential suicide or dangerousness. For agencies seeking accreditation there are specific standards to consider. The Council on Accreditation Standards on Crisis Intervention Services, for example, require that the agency develop written procedures for treatment and referral in cases where the person served is threatening suicide. The COA Standards on Ethical Practice, Rights and Responsibilities Confidentiality and Privacy Protections require that agencies have a clearly stated procedure governing disclosure of client information. This would apply in cases where the person may be dangerous to themselves or others. This standard is interpreted by COA as follows:

*“The organizations’ procedures must reconcile legal restrictions and requirements on the release of identifying information about persons served with mandatory reporting requirements and the organization’s duty to warn a person who may be in danger. Written procedures should include guidance to personnel in determining the degree of danger a person may pose to him or herself or the community.”* (Council on Accreditation for Children and Family Services, 2001, p.G1-10)

In cases where a child is in need of protection, everyone has a legal duty to report suspected child abuse to the Ministry of Children and Family Development. (See Section IX question 43 for more detailed information regarding reporting requirements and other steps to take in cases of suspected child abuse.)

The Guidelines below are confined to issues of confidentiality and record keeping. They do not attempt to describe appropriate counselling strategies or interventions in cases involving clients who may be suicidal or a danger to others. In addition to considering the guidelines below, your agency may want to develop an in-house policy to address these legally and ethically complex issues.

*Consider staff training on risk/lethality assessment and appropriate intervention strategies for potential suicide cases. The following agencies can be contacted for further information and assistance:*

- *Suicide Attempt Counselling Service (S.A.F.E.R.)*
- *Crisis Intervention and Suicide Prevention Centre of BC*
- *Living Through Loss Society*

## Guidelines

- 23.1 The duty to protect client confidentiality and not disclose client information to third parties without the client's consent, is not absolute. It is subject to legal reporting requirements contained in the *Child, Family and Community Service Act* and other reporting obligations which may be set by agency policy designed to protect the safety of the client or others.
- 23.2 In cases where the client or potential client indicates she is likely to be a danger to herself or another adult, agency staff should:
- adopt and consistently use a recognized risk or lethality assessment tool and attach this to your in-house policy on records management. (To obtain additional information on risk assessment tools currently in use, contact the BC Association of Specialized Victim Assistance & Counselling Programs or the BC/Yukon Society of Transition Houses.)
  - consult with another professional whenever possible, to obtain an opinion as to whether the circumstances are sufficiently compelling to warrant disclosing the client's personal information
  - make appropriate referrals
  - seriously consider notifying the psychiatric or mental health unit, the client's physician, the intended target, or the police, as appropriate

(Under PIPA, if compelling circumstances affecting anyone's health or safety exist, the agency may disclose the necessary personal information about the client.)

- provided it will not put the client or anyone else at further risk, discuss any privacy breach with the client beforehand and get her consent if possible; otherwise, notify the client afterwards provided there is no risk involved
- if the client was advised or consented to the disclosure of information to any third parties, make a note of this fact and include this information in the Service Record
- document the notifications and include them in the Service Record.
- document any other steps taken by the agency. Note the date and time of procedures followed and any individuals contacted and include it in the Service Record

23.3 In cases where a service provider is made aware of circumstances that indicate that a child is in need of protection:

- report the suspected abuse to a Ministry of Children and Family Development Child Protection Social Worker
- document the ministry's response
- document carefully any steps taken by your agency
- advise the client of any agency interventions unless informing her would impede the due process of law or put the child at further risk of physical or emotional harm
- if the client was advised or consented to the disclosure of information to any third parties, make a note of this fact and include this information in the Service Record (See Section IX of these *Guidelines* for more detailed information regarding reporting requirements and other steps to take in cases of suspected child abuse.)

**Consulting with the Ministry for Children and  
Family Development**

*Section 13 of the Child, Family and Community Service Act lists circumstances which indicate a child needs protection.*

*If uncertain as to whether you are required to report to MCFD, contact an MCFD intake worker.*

*Inform them that you are not making a report but are requesting guidance and consultation. Document the results of the consultation in your Service Record.*

**24. What if the client is an adult survivor of childhood sexual abuse?**

**Guideline**

- 24.1 If an adult client (over age 18) indicates that she was sexually abused as a child the CFCSA requirement to report does not apply. If, however, there are reasonable grounds to believe that other children are at risk from the same abuser, the service provider must report this to the Ministry of Children and Family Development.

**An Effective Documentation Practice**

- a) *If you report the abuse, follow the same steps you would take when made aware of circumstances that indicate a child is in need of protection.*

## V. Practices Associated With the Release of Client Records

### 25. *What if the client wants to see her Intake or Service Record?*

#### Guidelines

- 25.1 Unless the funding contract states otherwise, records created or produced by agency staff are owned by and are the responsibility of the agency and there is no obligation to give the client physical possession of file contents.
- 25.2 Generally, the client has a right of access to the information contained in her file. *McInerey v. MacDonald*, (1992)
- 25.3 The client's access to file information should not include access to information regarding third parties which was not provided by the client.
- 25.4 If the record is, by virtue of the contract, under the custody or control of the funding ministry, contact the Director/Manager of Information and Privacy. The request will be treated as a request under FOIPPA. If the record is under the agency's control, PIPA applies and the request should be handled by the agency's privacy officer.

#### Effective Documentation Practices

- a) *Allow agency clients to review the contents of their Intake or Service Records.*
- b) *Allow agency clients to check the accuracy of all information that is recorded as fact and contained in their records. Persons served have the right to insert a statement into their case records and if agency personnel insert a statement in response, such statements should be inserted with the knowledge of the client and the client should be given the opportunity to review such a response.*
- c) *Copy the records and permit the client to view the copy. If records are electronically maintained, then the management information system should be designed to enable timely and rapid access to the information. Have an agency staff member, preferably the creator of the record, monitor the viewing process in order to provide support and clarification.*
- d) *If information about third parties which was not provided by your client is included in the client's records, remove this information from the file before it is reviewed or take other steps to ensure it is not disclosed without the consent of the third party. For example, make copies of the relevant pages and black out information about the third parties.*

## **26. What if the client does not have the mental capacity to make decisions about release of her records?**

In this situation your client or the courts will likely have granted someone the authority to act as a representative for the person lacking capacity.

Under PIPA regulations, this representative could be:

- a committee under the *Patients Property Act*
- An attorney acting under an enduring power of attorney
- A litigation guardian
- A representative under the *Representation Agreement Act*

Under PIPA this representative has the right to:

- access a record; the right to request correction of personal information contained in the record; and
- give or refuse consent to the collection, use and disclosure of personal information on behalf of an adult who is incapable of exercising these rights themselves.

Under FOIPPA, the person's committee under the *Patients Property Act* is authorized to make these decisions. Most agencies will be governed by the PIPA regulations.

### **Guidelines**

- 26.1 If your client lacks the capacity to consent to release of their personal information, determine who has the legal authority to act on their behalf.
- 26.2 Request copies of the documents authorizing the representative to make decisions on behalf of your client.
- 26.3 Obtain the written consent of your client's representative.

## **27. What if the client is deceased and family members want access to her records?**

### **Background**

Under PIPA regulations, if someone has died, their personal representative can exercise that person's rights to access information and make corrections to that information. If there is no personal representative, the person's nearest relative can act on their behalf.

### Guideline

- 27.1 The agency should develop an in-house policy governing release of records in cases after a client's death. The policy should be based on the PIPA regulations.

### **28. *What if there is a need to disclose client information for other reasons, for example, to consult or obtain supervision, or respond to a request from your client's lawyer?***

#### Guidelines

- 28.1 Unless agency staff are legally required to disclose information, client information should not be released to third parties outside the agency without the informed consent of the client. Even where the client consents, restrictions should be established regarding what client information can be shared and clear policies should be developed restricting the dissemination of client records. To satisfy the requirement of informed consent, the client needs to know exactly what information is intended to be shared, with whom, and for what purpose.
- 28.2 If the service provider needs to disclose client information for consultation purposes or otherwise, where there is no legal requirement to release it, the client's written consent to disclose should be obtained. If the client cannot read a written consent form, it should be read out and explained to her. If the client cannot understand English, an interpreter should be used.
- 28.3 The client should be provided with a copy of the signed consent form. The original should be kept in the case file for the recommended retention period.
- 28.4 Inform the client at the start of the service relationship of some of the situations which may come up in which confidentiality is limited and how you intend to handle them. Examples might include:
- presenting her case (without identifying information) for training or supervision purposes
  - a need for the client to obtain funds from Crime Victim Assistance and the resulting requirement for the service provider to submit reports on counselling progress to Crime Victim Assistance personnel.

### Effective Documentation Practices

- a) *It is not generally advisable to transfer information or client records to a professional outside your agency including your client's lawyer. Do so only when the client has consented and it is deemed essential. Take steps to ensure that appropriate confidentiality policies are in place in the receiving office. You may, for example, wish to advise the consulting professional that the consent is time-limited and request that any transferred records be destroyed after the expiry date.*
- b) *Consider establishing guidelines for your agency restricting the use of mail, faxes, E-Mail and Internet systems to transmit client information outside the agency for any reason.*

### To satisfy the requirements of informed consent, a written consent should:

- *set out the nature of the information to be shared, the recipients of the information, and the purpose for which it is being shared*
- *indicate whether it applies only to information that has already been gathered, or also applies to information that may be obtained in the future*
- *be signed by the client and dated be time-limited*
- *include a statement to the effect that the client may withdraw her consent at any time*

## **29. What if Police informally request information about clients?**

Normally under the *Personal Information Protection Act* (PIPA), consent would be required before any of the client's personal information could be shared with third parties including police. But there are exceptions to this rule. Under PIPA section 18(1)(j), your agency *may* disclose without consent to a law enforcement agency such as police under certain circumstances. You may disclose to assist police with an investigation, or to assist them to make a decision to start an investigation.

Section 18 applies before a charge is laid. It *permits you* to share personal information with law enforcement agencies but does not *require you* to share this information. Each situation will need to be decided on its own merits.

PIPA does not apply to documents related to a prosecution if proceedings, including possible appeals, are still pending. This means that once a charge has been laid, until all appeals have been exhausted, regular criminal law rules regarding disclosure and evidence gathering will apply rather than PIPA. Under these circumstances, you are not generally required to release information without a court order. It may well be against your client's interests to do so.

Most but not all agencies or programs will be covered by PIPA. For those that are not, reference should be made to equivalent provisions in the FOIPPA. For general information on these acts, see the Introduction.

Releasing personal information can have significant implications for your client. As a matter of law with few exceptions, all relevant documents that police or Crown counsel review in the context of a criminal case must be disclosed to defence counsel. *R. v. Stinchcombe*, (1991) The use of this material for cross examination of the victim could then result in her re-traumatization. There may also be cases where information contained in the records will assist the woman. It might corroborate her complaint or provide aggravating details. An in-house policy at your agency should outline what criteria might be considered by your agency's staff in deciding about release.

## Guideline

- 29.1 Develop an in-house policy that applies in cases where a request for information is made by police without a court order.

### Effective Documentation Practices

*Consider adapting the following clauses for inclusion in your in-house policy:*

- a) *The client should be informed at intake or soon after, of the agency's policy regarding release of records to third parties, including police.*
  - *Client records should not be released to police (or any third parties) without the client's consent unless the agency is legally required to release them for example, a court orders the release of client records, agency staff are subpoenaed and then required to give evidence in court, or there is a statutory or common law obligation to disclose, for example, under the Child, Family and Community Service Act or a situation where there is reason to believe the client is a danger to herself or others.*

- b) *If agency policy is to release to police, Crown or third parties (where not legally required) with the survivor's consent, the following precautions should be taken:*
- *inform her that there are legal implications to release of the records*
  - *recommend that she obtain independent legal advice prior to release of the records to discuss legal implications*
  - *have the survivor sign a written consent*
  - *document that the above precautions have been taken (e.g. the written consent could confirm that precautionary steps have been taken)*

### **30. What if client records are the subject of a search warrant?**

#### **Background**

A search warrant is a court order issued by a judge under the *Criminal Code*. It overrides any requirements not to release information under PIPA. The warrant authorizes a named person, usually the police, to enter a specified place to search for and seize specified property which will provide evidence of the commission of a crime. The warrant must contain sufficient description of the objects of the search, e.g. the type or category of objects and their relation to the offence. The warrant may be issued early in a criminal investigation before charges have been laid. It is possible that client records may be the subject of a search warrant. For example, if the client was a Transition House resident who resumed living with her husband and was later murdered, police might execute a search warrant to obtain Transition House records regarding the survivor. Police may believe the records will provide important evidence that is relevant to an issue in the murder case.

#### **Guideline**

- 30.1 If your agency is served with a search warrant, read the warrant and provide police with the objects described in the warrant. If you have concerns about the warrant or how it is being executed, for example, if you believe the warrant does not describe the objects in enough detail or does not link them to an issue in the case, you must still comply with the terms of the warrant. Contact a lawyer at the earliest opportunity. The lawyer may make an application to quash the warrant.

### **31. What if client records are subpoenaed in the context of a criminal prosecution for a sexual offence?**

#### **Background**

The criminal law applies here rather than the *Personal Information Protection Act*. (PIPA does not override the *Criminal Code* or other federal laws.)

There are two main ways your client's records or files may be involved in court proceedings in a criminal case:

- Your agency's *records* about the client are subpoenaed
- You or other agency *staff* are subpoenaed to appear as a witness in court and bring relevant documents with you.

This section deals with subpoena of the records. Guidelines related to subpoena to appear as a witness are dealt with under question 34.

A subpoena of the records is often described as making an application for "production". You will be served with a Notice of Motion and Subpoena. A hearing (separate from the trial) will be held on the application to have the records released or "produced". If the court orders the records released this does not mean they are automatically admissible as evidence during the trial. Instead information contained in the records may be used by defence counsel to help develop questions for cross examination or as a way to find out about other possible evidence they can use in the defence's case.

If a sexual offence is involved, the procedure which defence counsel will follow to apply for access to your client's records is governed by *Criminal Code* sections 278.1 to 278.91. The procedure is outlined in detail in Appendix IV. A sample Notice of Motion and Subpoena are included in Appendices V and VI.

A record is defined in these sections as any form of record that contains personal information for which there is a reasonable expectation of privacy. The sections apply whether the record is held by a third party such as a Transition House or Community Based Victim Assistance Program or by the Crown prosecutor.

**Offences covered by *Criminal Code* sections 278.1 to 278.91**

If the accused is charged with one or more of the offences below, his access to the survivor's private records is now restricted by *Criminal Code* sections 278.1 to 278.91:

- Section 151 Sexual Interference
- Section 152 Invitation to Sexual Touching
- Section 153 Sexual Exploitation
- Section 155 Incest
- Section 159 Anal Intercourse
- Section 160 Bestiality
- Section 170 Parent or Guardian Procuring Sexual Activity
- Section 171 Householder Permitting Sexual Activity
- Section 172 Corrupting Children
- Section 173 Indecent Acts
- Section 210 Keeping a Common Bawdy House
- Section 211 Transporting Someone to a Bawdy House
- Section 212 Procuring
- Section 213 Offence In Relation to Prostitution
- Section 271 Sexual Assault
- Section 272 Sexual Assault with a Weapon
- Section 273 Aggravated Sexual Assault

Sections 278.1 to 278.91 restrict the accused's access to private records regarding the survivor. They were added to the *Criminal Code* in 1997 in response to the Supreme Court of Canada case of *R. v. O'Connor*, (1995) and lobbying of former Justice Minister Allan Rock by women-serving organizations across the country. The O'Connor ruling required record holders - including community-based agencies - to release a survivor's personal records subject to a low test for relevance.

## Guidelines

- 31.1 Advise your client of the situation and the steps you intend to take.
- 31.2 Advise your client to get independent legal advice by referring her to the Legal Services Society.
- Crown counsel acts on behalf of the state's interests and does not represent the survivor.
  - Your agency may not have the same legal interests as your client so it is not appropriate for you to have the same lawyer.

*The Ministry of Public Safety and Solicitor General will fund legal representation for:*

- *any survivor and may provide assistance for eligible agencies whose records are subject to an application for release under Criminal Code sections 278.1 to 278.91*
- *victims of prescribed criminal offences (as per schedule 1, Crime victim Assistance (General) Regulation) who require representation independent from that of Crown counsel in response to a disclosure application relating to the personal history of the victim*
- *witnesses of crimes subject to disclosure applications other than s. 278.3 disclosure applications.*

*This funding is based in part on s. 3 of the Victims of Crime Act which requires the Ministry of Attorney General to take measures to ensure legal representation for victims in certain situations.*

*For further information, contact Victim Services Division, Policing and Community Safety Branch*

- 31.3 Consider seeking legal advice for your agency. This may be important to protect the reputation of your program as being a confidential service. Contact the Legal Services Society to see if your agency qualifies for funding for legal representation. Otherwise try to set up a contract with a lawyer who agrees to volunteer their time for your agency or will give a discounted rate.

*If your agency retains a lawyer to handle the application for production, the lawyer may ask:*

- *has the defence lawyer provided any evidence that the type of information they are looking for is likely to be in the records they are demanding?*
- *is it logical to infer from the surrounding circumstances that the records do contain such information?*
- *if the information is in the records, does it relate to an issue in the case?*
- *how important is client confidentiality to your agency's work? Do you have evidence to support the view that assurances of confidentiality assist women to come forward to seek help?*

- 31.4 Inform Crown counsel that you have been served with a production order and the position you intend to take. While Crown counsel does not represent the survivor or the agency, Crown may have a role to play in ensuring the correct procedure has been followed by defence, especially if the survivor has not yet retained a lawyer. Crown may object to insufficiency or lack of notice. For example, if the records relate to group counselling and other group members who are not the target of the production application were not served with the Notice of Motion, Crown might object.
- 31.5 You and/or your lawyer must appear in court on the day set out in the Notice of Motion. You are not required to release the records in question until the court orders you to do so (at the hearing). Although the Subpoena will state that you are to bring specific records with you to the hearing, it is unclear whether you are required to do so under *Criminal Code* sections 278.1 to 278.91.27
- 31.6 Consider adopting an in-house policy which provides that client records not be released to police or Crown counsel without a court order. Under the *Criminal Code*, if Crown has the records Crown must notify defence of their existence (without revealing the contents.) Under O'Connor, the relevance of therapeutic records is presumed when they are in the possession of Crown. As a matter of law with few exceptions, all relevant documents that police or Crown counsel review in the context of a criminal case must be disclosed to defence counsel.

- 31.7 Consider adopting an in-house policy that provides that client records not be released to any third parties unless your client consents or you are legally required to do so, e.g. the court orders you to release client records, you are subpoenaed to appear as a witness *and* then required to give evidence in court, or you have a statutory obligation to disclose, for example, under the *Child, Family and Community Service Act*.
- 31.8 There may be cases where the client *will* consent to the release of records or wishes them released without a court order or other legal requirement. Information contained in the records may corroborate her complaint or provide aggravating details. Whatever approach your agency takes here, the client should be informed of it, preferably at intake or soon after. If agency policy is to release to police, Crown or third parties (where not legally required) with the survivor's consent, the following precautions should be taken:
- inform her that there are legal implications to release of the records
  - recommend that she obtain independent legal advice prior to release of the records to discuss legal implications
  - have the survivor sign a written consent
  - document that the above precautions have been taken (e.g. the written consent could confirm that precautionary steps have been taken)
- 31.9 If you have been served with an application for production of records (the Notice of Motion and Subpoena), and you are bringing documents to court, include an original and a copy of the records specified in the Subpoena. Leave an additional copy in your case file at the agency. Seal all the documents. If the records are ordered released, you will want a copy for your reference. If the records are not released, the file will be kept by the court in case later evidence results in another application for production. When all levels of appeal are exhausted, the record will be returned to you. This may take months or years.
- 31.10 If the judge orders the records released, you or your lawyer can argue that any one or more of the following conditions should be attached:
- only part of the record should be released
  - only a limited number of copies should be made
  - for safety reasons, any identifying information of people named in the record should be deleted

### **32. What if client records are subpoenaed in the context of criminal prosecution for a non-sexual offence such as spousal assault?**

#### **Background**

If an accused is charged with a non-sexual offence such as simple assault, then the principles set out by the Supreme Court of Canada in the case of *R. v. O'Connor* will apply to requests for release of third party records.

Many of the O'Connor principles and procedures are parallel to those contained in the *Criminal Code* under sections 278.1 to 278.91:

- the accused must establish that the documents are likely relevant
- the judge must consider the positive and negative effects of producing the records
- the accused must also serve the record-holder with a Notice of Motion and Subpoena

Under O'Connor, however, privacy protections for the survivor are limited. The survivor's right to equality is not a consideration under O'Connor. Also, a number of the "insufficient grounds" for production which are set out in the *Criminal Code*, and which in effect can make it more difficult for the accused to establish likely relevance, do not apply under O'Connor.

#### **Guideline**

32.1 Apply the Guidelines under item 31 with the necessary changes.

### **33. What if the accused already has the records?**

#### **Background**

It is unlikely the accused would obtain possession of records maintained by the agency. He might, however, get access to documents created by the client, such as her personal diary which are kept at home. This might happen where the couple had been living together at some point.

If for some reason the accused already has the records in his possession, then the sex offence privacy protections contained in *Criminal Code* sections 278.1 to 278.9 don't apply. This is because the courts treat this situation as a question of "admissibility of evidence" and not "production" *R. v. Shearing*, (2002). The regular rules of evidence will apply.

## Guidelines

- 33.1 Let your client know that if there is a trial:
- she may be cross examined on the contents of the records; and/or
  - the records may be introduced as evidence if their contents are considered relevant to an issue in the case.
- 33.2 Inform Crown counsel that the accused has the records.

### ***34. What if you are subpoenaed to court to appear as a witness at the time of the preliminary inquiry or trial?***

#### Background

This is a different process from subpoenaing the records. It involves you appearing as a witness. You will be served with a subpoena which requires you to attend court and give evidence. The subpoena may also include a clause requiring you to bring along anything in your possession that relates to the charge including particular documents. This might happen where defence has *already* obtained a production order, has reviewed the records and now wishes to introduce them as evidence at the trial.

#### Guidelines

- 34.1 Follow the directions contained in the Subpoena. Generally this requires you (the custodian of the records) to attend court at the time, place, and date of the trial. If the records have not yet been released in the case, the Subpoena does not require you to provide them until the court orders it.
- 34.2 Advise your client of the situation and the steps you intend to take.
- 34.3 Advise your client to get independent legal advice.
- 34.4 Get legal advice for your agency. Even if a production order (for release of the records) has already been made by the court before trial, the records are not automatically admissible as evidence in the case. Your lawyer may now object to the records being admitted as evidence, for example, on the grounds that they are inherently unreliable as a source of “factual” information.

### **35. What if client records are subpoenaed in the context of a custody dispute or another civil case or the service provider is served with an application for an Order for Production and Inspection of Records?**

#### **Background**

There are two major ways in which disclosure of client files may be formally requested in a civil court case:

- 1) when an application or notice of motion is made for the production and inspection of client records as part of the pre-trial discovery process; or,
- 2) when program staff and their client records are subpoenaed to appear in court at trial.

If pre-trial production of records is being requested, you will receive a notice of motion prior to trial advising you of the disclosure application. For example, the non-custodial parent may request release of your client's files in order to assist him in a custody dispute. The notice of motion does not contain the actual order for production of the files nor does it require the service provider to produce the files. For example, where the agency has two types of records regarding a client – such as one set related to justice system information and support services and the other related to counselling services – and where likely relevance is based only on arguments related to information in one type of record, then the other records may not have to be released because they are irrelevant. This position is strengthened if the two types of records are kept in separate files or in separate sections of the same file.

Just because you receive a notice of motion to produce records does not automatically mean the records you have must be released. Ethical or accreditation standards may require that you first consider the legal validity of a request for release of records before you disclose them. In consultation with your agency's lawyer, you might challenge the request for records. For example, your lawyer could argue that the documents should be privileged or that their release be subject to strict conditions: *M.(A). v. Ryan*, (1997). At trial, it could be argued that the records are inadmissible as evidence on the grounds that the information contained in the records is of limited relevance to an issue in the case.

If a subpoena is issued, you will be served with it. A subpoena is a court order compelling a person to attend court to give evidence. For example, if you are an STV counsellor, you may be subpoenaed by the defendant in a civil case for sexual assault to give evidence as to what the victim may have said to you at the time she first disclosed the assault. The subpoena orders the custodian of the files to attend court with her/his records at the time, place, and date of

the trial. If you do not attend, you may be arrested and charged with contempt or obstruction of justice.

There may be other cases where your *client's* lawyer asks you by phone or letter to provide information to support your client's civil action. In the absence of a court order or subpoena requiring you to release records, you will need to get your client's consent before releasing any information. (Refer to question 28 for further information) When making decisions about release in this situation, it is important to consider existing research which suggests that third party records are generally used to discredit, rather than support the victim's claim (Cory, Ruebsaat, Hankivsky & Dechief, 2003).

## Guidelines

35.1 If client records are subpoenaed or the service provider is served with an application or notice of motion advising her that an order for production and inspection of the client's records is being sought, the following steps should be taken:

- contact a lawyer
- consult with any applicable provincial umbrella agencies, licensing bodies or professional associations regarding ethical requirements
- carefully review the records in question to identify any parts which, it could be argued, might be retained on the grounds of privilege or irrelevance
- as appropriate, assist your lawyer by providing information on why all or some of the information is privileged or irrelevant
- as appropriate, inform your lawyer that:
  - it was expected that the communications with your client would be kept confidential
  - this confidentiality is essential to the agency client relationship
  - that supporting this type of agency client relationship is in the public good; and
  - that the interests served by protecting the communications from disclosure outweigh the interest of pursuing the truth and preventing an unjust verdict: *M.(A.) v. Ryan*, (1997)
- assist the lawyer by formulating possible conditions or limits which can be attached to production and the reasons for these restrictions
- advise the client of the situation and the steps you intend to take
- advise the client to obtain independent legal advice

- make copies of all the records in your client's file and keep them at your agency in a separate file for the recommended retention period. (See *Section VI, Retention of Client Records* for further information.) Consider having the copies of your client's records certified by a lawyer or notary; this way, you can use them for other legal purposes while the originals remain with the court.
- 35.2 If your agency has been served with a notice of motion, you are not legally required to produce client records immediately. If served with a notice of motion, the service provider should attend court at the date and time specified therein. At that time, the court will hear arguments about the relevance of the documents in question. If served with a subpoena, attend court with the records at the date and time requested.
- 35.3 When called to the stand, if the service provider is asked to produce the files, she should first state any concerns regarding the need to protect her client's confidentiality and then wait to hear what the judge directs. The service provider must proceed as directed by the judge.
- 35.4 If the service provider believes that the safety of her client or any person is threatened by the release of the records, this should be stated to at the hearing.
- 35.5 If the court issues an order for production and inspection of client documents, the terms set out in the order must be complied with. The service provider should only release the documents ordered by the court.
- 35.6 The service provider or her lawyer should request that the wording of any court order which is made be precise in terms of which documents must be released under that order.
- 35.7 If the court orders the production of the files, the service provider or her/his lawyer should request that the court impose terms in order to limit any invasion of privacy. This would include, for example, a request that non-relevant sensitive portions of the record be edited (by the judge) prior to release, that no photocopies be made and/or that the party seeking access to the records only be permitted to view them in the presence of the agency's lawyer.

## VI. Retention of Client Records

### 36. *How long should client files be kept?*

#### Background

PIPA requires that personal information be kept for *at least* one year. After that, the retention period should be based on legal or business requirements. The Guidelines below recommend that, in general, adult client records be kept for a minimum of seven years while the records of a child client be kept seven years after they reach age 19. The seven year minimum is based on the need to protect agencies from potential legal liability and the client's possible need to access such records in the context of a civil suit for sexual assault. The Guidelines below go on to suggest that some agencies consider whether client records might be kept indefinitely subject to financial and space restrictions.

The seven year minimum retention period can be justified as consistent with current practice in related fields (social workers and psychologists) and with the legal or business needs of most community based programs. Council on Accreditation Standards also provide that as a general rule, the organization maintains case records for at least seven years after termination of services unless otherwise mandated by law (Council on Accreditation for Children and Family Services, 2001).

In deciding about retention periods, agencies should also refer to their funding contracts. These may require that client records be kept for a certain period of time.

Some service providers believe it is best not to keep notes or records at all. This is because of the possibility that client records might have to be disclosed to unsympathetic third parties in a court case. There is a real need to protect client privacy and a real concern that private information will be used inappropriately or in an adversarial way. Despite these concerns, a decision not to keep records may not be in the client's or agency's best interests. Records provide an important source of information for both client and service provider.

Conscientious record-keeping can help the service provider develop and implement an appropriate plan of service, review her/his work as a whole and self-monitor more carefully. Also, if the client decides to pursue a civil claim for damages for pain and suffering resulting from a sexual or physical assault, counselling records might verify the extent of psychological trauma suffered. If she makes a claim for Crime Victim Assistance, her records can assist in establishing the need for compensation.

It is not easy to predict when or what type of legal process your client might be involved with. There is a 6 month limitation period for summary conviction offences under the *Criminal Code* and no limitation period for indictable (more serious) offences. This would include the more serious physical and sexual assaults. In civil cases, there is no limitation period for claims related to sexual assault. This means that in certain cases, a criminal or civil action related to your client may be initiated at any time in the future even if no legal process is planned or underway at the time services are requested or delivered.

In addition to possibly establishing your client's claim, client records can help support you or your agency if you are sued for negligence or malpractice. Civil actions for professional negligence are subject to a two year limitation period. Actions for breach of fiduciary duty are subject to a six year limitation period. This means that a client, former client, or aggrieved third party, could launch a civil suit against you or your agency anytime up to two years after an alleged negligent act by an agency staff member or anytime up to six years after an alleged breach of trust. If records were not kept or were destroyed within the six year period and a lawsuit is commenced, it may be difficult to verify actions taken or interventions made by your agency on behalf of the client.

The legal concept of "reasonable discoverability" is also important to note. In civil cases, limitation periods may be suspended if the client wasn't able to discover (until much later) the connection between the harm caused and the acts complained of. For example, if a survivor was sexually assaulted or abused by a private psychologist, this survivor may not be in a position to understand the cause of her psychological harm until she consults another counsellor or psychologist many years later. In this situation, the court may decide to extend or suspend the six year limitation period which might apply in such a civil case. In criminal prosecutions, the destruction of client records may also have a significant impact on the client or agency. If your client is a survivor/witness in a criminal case and agency records were destroyed prior to the trial, there is a chance the case will be stayed if her counselling records are requested by defence and are no longer available: *R. v. Carosella*, (1997).

Some professional associations recommend or require members to keep client records. The code of ethics of the Canadian Psychological Association, the B.C. Board of Registration for Social Workers, the B.C. Art Therapy Association and the B.C. Association of Clinical Counsellors, for example, all identify the need to maintain session notes.

Please note that the Guidelines and Documentation Practices set out below apply only to operational records and not to administrative records.  
(See Guidelines Appendix I - Glossary)

## Guidelines

- 36.1 Some agencies may choose to keep all client records indefinitely. For many, this may not be possible given financial or space limitations. The Documentation practice tips below recommend that operational records be kept a minimum of seven years for adults and seven years past the age of majority for minors.
- 36.2 Client records should not be destroyed if they have been subpoenaed or if legal proceedings are underway or expected.
- 36.3 Develop a written agency policy on file retention and inform agency clients (preferably at intake) of this policy.

*Write your retention policy as if it were a public document and be able to justify its contents. Base the policy on the service requirements or needs of your agency. If your agency has a policy of shredding after a certain number of years, this policy might be strengthened by including a rationale for that approach, e.g.:*

- *space and financial limitations do not allow files to be kept indefinitely;*
- *the retention period is based on accepted practices within the field;*
- *the client has been advised of and has agreed to the retention period.*

### Effective Documentation Practices

#### For Operational Records

- a) *Unless otherwise required by law or contract, keep these records a minimum of seven years. (It is recognized that this may not be possible for all agencies given current funding levels.)*
- b) *At the end of the seven year period transfer critical information from the record into a File Summary or database and then shred the complete record. File the Summary and keep it indefinitely.*

### Sample File Summary

**Client Name:**

**Age:**

**Address and Telephone:**

**Presenting Issue: (particulars of complaint  
or reason for seeking service)**

**Dates of Contact:**

**Date Record Destroyed:**

#### **For Operational Records Involving a Client Who is a Minor (under 19)**

- a) *Unless otherwise required by law or contract, keep these records a minimum of seven years after the client has reached the age of majority. (age 19)*
- b) *At the end of the seven year period, follow documentation practice b) above under Operational Records.*

### **37. What about old or pre-existing files which have been kept in their entirety?**

#### **Guideline**

- 37.1 If resources are available, consider transferring information contained in these files into a File Summary or database following the procedure set out in question 36 and shred the remaining file contents.

## VII. Destruction of Client Records

### **38. How should client records be destroyed?**

#### **Guidelines**

- 38.1 If possible, client records should be shredded at the end of the retention period adopted by your agency.
- 38.2 If records are computerized, ensure that they are rendered unreadable through the use of an appropriate mechanical, physical, or electronic process.

### **39. What if the client wishes her records destroyed before the recommended retention period is over?**

#### **Guidelines**

- 39.1 Unless your agency's funding contract states otherwise, the agency is responsible for the records it creates and has no legal obligation to destroy them at the request of the client.
- 39.2 In some cases, for example, in situations where agency staff or board members are concerned about possible legal liability, it will not be in the interests of the agency to destroy the records contrary to the recommended retention period.

#### **Effective Documentation Practices**

- a) *If your client asks you to destroy her records, inform her that there are legal implications. If you are considering destroying the records before your agency's recommended retention period has expired, recommend that your client obtain independent legal advice before the records are destroyed. If your agency has an internal policy regarding file retention, consult it first.*
- b) *In exceptional circumstances where your agency decides to destroy the records:*
- *basic file information should be recorded in a File Summary or database. (See Section VI, question 36, Retention of Client Records)*
  - *the client should sign a written consent stating that she requested and agrees to this action and that she has been referred to a lawyer to discuss the implications*
  - *the consent should be referred to in the File Summary or database and should be filed and retained indefinitely by the agency.*

## VIII. Closure of the Agency

### 40. *What should be done with client records if the agency dissolves or shuts down?*

#### Guidelines

- 40.1 The agency's contract with the provincial government should be referred to in order to determine if it deals with this situation. If the contract specifies that client intake and service records are owned by the ministry, then these records should be sealed and forwarded to the ministry.
- 40.2 If the contract does not address this situation or does not state that Intake and Service Records are government property, then the funding ministry should be advised of the closure of the agency. Records, for which the retention period has not expired, should be sealed so as to preserve confidentiality and stored at an independent storage facility possibly with the assistance of government funding. If applicable, the sealed records could be forwarded to the appropriate community agency who receives the contract to continue the service.

If your agency does not have a shredder, commercial shredding services should be used where resources permit. Client records should not be recycled or placed with regular garbage.

## IX. Records Management Issues Related to Clients Who Are Children

### i) The Intake Process

#### 41. What is the process for documenting that a child client has consented to receive services?

##### Background

It is often said that “consent is a process not a form.” This is especially so where a service provider is determining whether a child is able to consent. While a signed consent form is necessary to establish that valid consent was given, no one consent form can address all the situations that can arise.

These Guidelines deal with records management issues. They do not attempt to outline appropriate counselling practice.

- Service providers working with children who witness abuse can refer to the Children Who Witness Abuse Counselling Source Book, 1996 for further information in this area. It is available for a nominal cost through BCYSTH. An order form is available on the website: [www.bcysth.ca](http://www.bcysth.ca)
- Stopping the Violence (STV) counsellors or other service providers working with women (including young women) who have been sexually assaulted can refer to: The Best Practices Manual for BC's Stopping The Violence Counselling Programs, 2006. It is available on the BCASVACP website: [www.endingviolence.org](http://www.endingviolence.org)

In order to consent to services/counselling, clients must have legal capacity. The *Age of Majority Act* provides that by age 19 individuals can make decisions affecting their welfare, including health care decisions. According to the *Infants Act* and case law, anyone under 19 is also capable of consenting to health care if the service provider:

- is satisfied the infant understands the nature and consequences and the benefits and risks of a particular plan of care and
- has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests.

The service provider should also ensure that the consent is voluntary and not the result of undue pressure.

Technically, anyone under 19 – even someone as young as 10 years of age – can consent to treatment or health care (including support services /counselling) provided they understand the nature and consequences of

treatment and the associated benefits and risks, and provided the care is in their best interests.

In *practice*, 12 years of age is often used by public agencies and service providers as a benchmark to help determine whether a child has the legal capacity to consent. In its policy and procedure manual, for example, the BC Children's Hospital has determined that patients 12 years of age and older are usually competent individuals. This means that generally they can give consent for any plan of care without the need to consult with their parents.

In addition to the child's age, the following general factors are often considered by service providers to decide whether young clients are capable of consenting:

- the child's developmental level and maturity
- the nature, complexity and duration of the plan of care (If the service or intervention is long term or very involved, more maturity may be required for a child to understand the nature, consequences, and associated risks and benefits.)
- the child's ability to agree voluntarily (Does the family situation interfere with the child's ability to make independent decisions? For example, is the child expected to go along with her/his parents' wishes in order to receive emotional or financial support?)

If the basic criteria for capacity to consent have been met, the service provider must then take steps to ensure the child makes an informed decision about the services they are to receive. This would involve:

- providing the child with information that a reasonable person would require to understand services being offered and to make a decision
- providing information about the nature and purpose of the services and any risks and benefits associated with them that a reasonable person would want to know about
- discussing alternatives to the services being offered
- responding to questions about the services (Bryce & Sandor, 2002)

While it is possible to provide services to a "mature minor" without the parents' consent or knowledge, it may be appropriate to involve a non-abusive parent in some way. This will depend upon the circumstances and the type of service being provided.

It is important to note that apart from consent issues, other general comments about information necessary for the intake process for adults would apply equally here. For example, there may be a need for safety planning or risk

assessment related to mother and child when services are being provided to the child. (See Section III: The Intake Process for further information)

### Capacity to Consent

#### A Possible Approach to Assessing the Child's Developmental Level

***Is the child able to:***

- *understand the steps used in developing the plan of care*
- *interpret information correctly and logically*
- *propose alternatives*
- *follow-through on an agreed-upon course of action*
- *appreciate the benefits and risks of the agreement or plan of care*
- *assess the credibility of information related to the choice of alternatives, and is the child willing to:*
  - *choose a course of action*
  - *accept compromises and*
  - *stick to a decision once made*

#### Guidelines

- 41.1 If the child is consenting to services/counselling on her/his own behalf, the service provider should document steps taken to determine the client's capacity to consent. This documentation should be kept in the client's file for the recommended retention period. (See Section VI: Retention of Client Records)
- 41.2 If the child is not capable of consenting and the referring parent has sole custody but guardianship of the child is joint, the service provider may obtain consent from the custodial parent unless the guardianship order requires that the guardian also be consulted. (See question 42)
- 41.3 If the child is not capable of consenting and the referring parent shares joint custody, the service provider should make every effort to obtain consent from both custodial parents. If this is not possible, the service provider may proceed with the consent of one custodial parent (Bryce & Sandor, 2002). The reasons for not getting consent from both custodial parents should be documented in the file.

- 41.4 If the child's parent(s) or guardian is providing consent, the service provider should document steps taken to verify the custody or guardianship of the child. (For examples of documents which can be used to verify custody or guardianship, see question 42.)
- 41.5 Once the service provider has determined that the child has capacity to consent, or the child's parent(s) or guardian has consented to services/counselling on behalf of the child, written consent to services/counselling should be obtained. The consent should outline the nature of the proposed services/counselling or intervention and should indicate that the child understands the benefits and/or the risks/consequences associated with it. The consent should be signed by the client or their representative and be kept in the client's file for the recommended retention period.
- 41.6 If the child has difficulty reading a written consent due to language difficulties, a low level of literacy, or a disability, then the service provider should document the fact that oral consent has been obtained from the client. This documentation should be kept in the client's file for the recommended retention period.
- 41.7 If the child cannot understand English, or has other difficulties communicating, an interpreter should be used to assist with an assessment of whether the child has the capacity to consent and to establish that the child has in fact consented.

**Possible Strategies to Help Decide Whether a Child is Able to Consent to Services/Counselling:**

- A. Explain the process, intervention or procedure to the child along with the associated benefits and risks. Ask them to outline in their own words what you have just said.
- B. With input from children or youth, develop a handout that summarizes the process and what it can do or what may happen as a result. Give the handout to the child client at the beginning of the service/counselling relationship and discuss it with them.
- C. If you are unsure of the child's ability to consent, involve another service provider if possible. Do you both agree that the child is mature enough to make the decision on their own?

**42. *If the child client is not capable of consenting to receive services, what documents are considered acceptable evidence of the referring adult's custody or guardianship?***

**Background**

Custody and Guardianship describe a bundle of rights and obligations that parents share before marital breakdown. Technically the rights of guardians and custodial parents are similar. Guardians often have the right to be consulted on questions regarding a child's religious upbringing, educational programs, athletics and recreational activities. Also, they usually have the right to be consulted on health care matters, excluding emergency health care. It is generally agreed that custodial parents have almost all the same rights as guardians. In addition, custodial parents have physical care and control of the child. In practice, however, when custody is divided from guardianship, many of the guardian's rights are effectively taken away. For example, if one parent has custody (day to day care and control) but both parents are guardians of the child, the parent with custody often has decision-making powers in relation to the child.

If the natural parents of your client are living together, each parent has equal rights as the child's joint custodian. In this case, therefore, if your client is not capable of consenting to receive services, both parents or either one may legally act on behalf of the child in decisions related to a plan for their health care.

If the natural parents have separated, the situation is more complex. If no formal agreement regarding custody has been reached, nor has the court ruled on the matter, then the person who has day-to-day care and control or with whom the child usually lives is generally considered to have custody and hence decision-making power. If day-to-day care and control of the child is shared, then decision-making powers are also shared.

If the question of custody has been decided by court order or an agreement exists between the parents, then the person who has been awarded sole custody has decision-making powers.

If the order or agreement provides for joint custody and guardianship, then either or both parents have these powers. In this situation the service provider may rely on the consent of only one parent (Bryce & Sandor, 2002). Although this is permitted, in general, it is best to make every effort to obtain the consent of both parents. This may not be possible in abusive family situations. If dual consent is not pursued, the service provider should document the reasons for this course of action.

In some cases, one parent may have sole custody while both parents are named as guardians. In this situation, the custodial parent is usually the one who makes day-to-day decisions for the child including health care decisions. Generally the guardian only has decision making powers on larger fundamental questions such as education and religion. There are exceptions to this general principle. In certain cases, a joint guardianship order may grant the non-custodial guardian – the parent who does not live with the child – some decision-making powers. In this case, the terms of the order must be followed.

It is important to remember that if the family is still involved in legal proceedings, agreements or court orders may change during the course of service delivery. It will be important to revisit some of the above issues periodically.

In cases where a child who is not competent has been found to be in need of protection and has been removed by the MCFD, then the director authorized under the *CFCSA* (or a caregiver authorized by him or her) may be entitled by agreement or court order to act as the guardian of the child.

In the absence of a formal agreement or court order, foster parents are not generally considered guardians of the child. They are not, therefore, entitled to consent on behalf of the child. In this situation, an MCFD Social Worker should be consulted for guidance.

### **Guidelines**

- 42.1 If the referring adult is the child client's natural parent, the service provider should find out whether there is a custody or separation agreement or a court order in place establishing custody or guardianship of the child. Efforts the service provider has made to determine whether such an agreement or order exists should be documented and kept in the client's file for the recommended retention period. (See Section VI for recommendations.)
- 42.2 If the service provider believes a custody or separation agreement or a court order exists regarding custody or guardianship of the child, then the service provider should request a copy from the client. Depending on the circumstances, one or more of the following documents can provide evidence of custody or guardianship:
- a court order establishing custody or guardianship
  - a separation agreement or other agreement regarding care of the child
  - an adoption order

The service provider should review carefully the court order or other document establishing custody or guardianship. While generally the

- custodial parent has most decision-making powers, there are exceptions. For example, in some cases, a guardianship order may give the joint guardian additional powers. This should be set out in the order. Also, the document should be checked to ensure it is up to date. In some cases, custody arrangements may change during the course of your relationship with the client. An alleged abusive partner with access rights, for example, may later be granted custody. If the service provider is unsure, s/he can ask the parent or guardian to obtain a current copy from the court registry. A signature from the appropriate court official confirms that the document is still in effect.
- 42.3 Any documents obtained to verify custody or guardianship should be kept in the client's file for the recommended retention period.
- 42.4 If it is not possible to obtain a copy of the legal documents referred to in item 42.2, then that fact and the oral information provided by the referring parent should be documented and kept in the client's file for the recommended retention period.
- 42.5 Consider including in the agency intake form a clause which provides that responsibility for notifying the agency of a change in custody or guardianship arrangements are the responsibility of the client.
- 42.6 If the referring adult is the client's natural parent, and there is no custody or separation agreement or court order in place regarding custody or guardianship of the child client, the service provider should request that the adult demonstrate that the child lives with him or her. Any evidence presented by the referring parent should be documented and kept in the child's file for the recommended retention period.
- 42.7 If the client is referred by the MCFD or by a foster parent, then the service provider should request that the responsible social worker or foster parent provide a copy of the court order establishing who has guardianship of the child.

### ***43. What if the client provides information that indicates that she needs protection?***

#### **Background**

In some cases, either at intake or later, circumstances may arise which suggest that a child is in danger. If there is reason to believe a child needs protection, there is a legal duty to promptly report the matter to the Ministry of Children and Family Development (MCFD). This duty overrides the duty to protect the client's confidentiality.

The requirement to report is contained in the *Child, Family and Community Service Act* (CFCSA). Section 13 of the Act describes the circumstances under which it is reasonable to believe that a child may need protection. The requirement to report is contained in section 14. Failure to report is an offence under the Act.

If the matter is reported to the MCFD, the CFCSA provides that the identity of the person making the report – e.g. the service provider – cannot be disclosed to the child’s parent or guardian by the ministry without the service provider’s consent.

In collaboration with the BC Association of Specialized Victim Assistance and Counselling Programs and the BC/Yukon Society of Transition Houses, as well as other provincial service providers, the Ministry of Children and Family Development has developed best practice approaches for child protection social workers in cases involving violence against women (Ministry of Children and Family Development, 2004). These MCFD best practice guidelines reiterate that the safety and well-being of children are of paramount concern. They also clarify that, in situations involving violence against women, a report to child welfare is not automatically required. Each case must be decided in relation to the section 13 criteria. The MCFD guidelines provide that women with children who show up and/or stay at a transition house do not automatically meet the test to report.

In addition to laws and policies, accreditation standards also need to be considered. The Council on Accreditation Standards, for example, call for written procedures which outline legal reporting requirements. They also require that service providers be oriented on laws governing suspected abuse and their agencies’ disclosure policy (Council on Accreditation for Children and Family Services, 2001).

If a report to MCFD is made and a child protection investigation is started, the ministry may request release of agency records about the client. See under question 50 for guidelines to address this situation.

### When is it Reasonable to Believe a Child may be in Need of Protection?

*Section 13 (1) of the CFCSA states that:*

*A child needs protection in the following circumstances:*

- a) if the child has been, or is likely to be, physically harmed by the child's parent;*
- b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;*
- c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;*
- d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;*
- e) if the child is emotionally harmed by the parent's conduct;*
- f) if the child is deprived of necessary health care;*
- g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;*
- h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;*
- i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;*
- j) if the child's parent is dead and adequate provision has not been made for the child's care;*
- k) if the child has been abandoned and adequate provision has not been made for the child's care;*
- l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.*

### Guidelines

- 43.1 If the service provider has reason to believe that a child needs protection, as set out in section 13 of the *Child, Family and Community Service Act*, they have a legal duty to report the matter. The service provider should report to a child protection social worker in either a Ministry of Children and Family Development office, or a First Nations child welfare agency that provides child protection services.

## How to Report

- Monday to Friday, 8:30 to 4:30 p.m., call your local district office (listed in the blue pages of your phone book)
- Monday to Friday, 4:30 to 8:30 a.m. and all day Saturday, Sunday and on statutory holidays, call the Helpline for Children, Dial 310-1234 (no area code needed)

- 43.2 If the service provider receives a disclosure of child abuse from the child, she should provide acknowledgment and support but should not interview the child. If questions are asked by the service provider, they should be short and open-ended, using words that are part of the child's vocabulary. The service provider should record what the child has said using the child's own words.
- 43.3 The service provider should record carefully any interventions made or actions taken in response to evidence that the child client is in need of protection. This would include recording the report made to MCFD and the ministry's response. If, for example, the ministry decides not to take action, this should be noted in the client's file. Any documentation should be kept in the client's file for the recommended retention period.
- 43.4 The service provider should advise the child client of any agency interventions unless informing her would impede the due process of law or put the child at further risk of physical or emotional harm.
- 43.5 If the child client was advised of or consented to the disclosure of information to any third parties, make a note of this fact and include this information in the Service Record.

### ***44. If a woman under 19 stays in the Transition House on her own, is a report to Child Welfare required?***

#### **Background**

Some agencies have developed local protocols with their MCFD Regional Office to clarify roles and responsibilities in this situation. If someone under 19 wishes to stay at the Transition House, her situation will need to be assessed in relation to the section 13 and 14 requirements of the *Child, Family and*

*Community Service Act.* Some agencies have a policy of contacting MCFD in these situations with the understanding that a Ministry Social Worker can come in to make the assessment.

For agencies seeking accreditation, it is also important to note that certain standards may be required as part of the service plan in this situation, for example:

- collaboration with child welfare authorities;
- plans for the maintenance, resumption or termination of parental responsibility;
- plans for adoption of the child; or plans for their transition to independent living.

#### **Guideline**

44.1 If your agency provides Transition House services (shelter) to women under 19, consider developing an agreement with the local MCFD office to clarify mutual roles and responsibilities. Contact the BCYSTH or the BCASVACP for further information.

### **ii) Practices Associated with the Release of Child Client Records to Parents, Guardians or Other Third Parties**

#### **45. *What if the client's parents or guardians want access to information from their child's file?***

##### **Background**

Many of the considerations outlined in question 41 regarding the child client's capacity to consent to counselling also apply here.

In determining whether your child client is capable of exercising the right to access their record or consent to its release to someone else, consider the following questions:

- is your client able to understand her rights to confidentiality?
- is your client able to understand the consequences of disclosure or non disclosure of information?

For agencies seeking accreditation, it is also important to consider that standards may require the involvement of family members in the delivery of

care to the child and the sharing of information with family members. For example, Council on Accreditation Standards require:

- as appropriate and with consent, a family-centred service plan
- ongoing family participation in assessment, service planning and service delivery unless contraindicated
- with consent, that family and significant others are kept advised of the ongoing progress and are invited to case conferences
- that child clients are informed of these requirements at the initial consultation or at intake (Council on Accreditation for Children and Family Services, 2001)

Whatever standards are applied, they must be interpreted so as to be consistent with legal requirements here in BC. An overview of the applicable laws is outlined below.

### **The *Personal Information Protection Act* (PIPA) and Parents' Access to Records**

Most non-profit agencies will be governed by information sharing rules contained in this act. (See Introduction for additional information.) In addition to its general requirements, PIPA regulations include rules about parents or guardians getting access to their children's records.

Under PIPA regulations, the right to access a record and the right to request correction of personal information contained in the record may generally be exercised by a parent or guardian on behalf of someone who is under 19 if:

- the child youth is incapable of exercising those rights themselves.

Similar regulations under FOIPPA have been interpreted as also requiring that:

- the parent or guardian be seeking access to the child's information to protect or advance the interests of the child and not trying to obtain information for their own use.

As with the process for deciding whether a child is capable of consenting to services, the child's age and their individual level of development are considered to determine whether they are capable of deciding for themselves. Depending on the circumstances, the maturity of the child, and the type of personal information involved, a child under 19 may or may not be capable of exercising her or his rights under PIPA regulations. Children under 12, in particular, may not be fully capable of exercising their rights under the Act. In practice, 12 years of age is often used by public agencies and service providers as the benchmark for capacity to consent in the health care context.

### **The Freedom of Information and Protection of Privacy Act (FOIPPA) and Parents' Access to Records**

Depending on the wording of their funding contract, some agencies will be covered by this act. (See Introduction for additional information.) FOIPPA also has regulations dealing with access to children's records. These rules are substantially similar to the ones under PIPA. If you are uncertain which act applies, contact your funding ministry's Director/Manager of Information and Privacy.

### **The Child, Family and Community Service Act (CFCSA) and Parents' Access to Records**

Most service providers know about the CFCSA's reporting requirements. (See Section IX question 43) Less well known is Part 5 of the Act. It deals with freedom of information and protection of privacy. Part 5 provisions were amended effective January 16, 2006 and are now largely consistent with privacy rules under FOIPPA.

#### **Questions which help determine whether Part 5 of the CFCSA applies to your agency's records**

- *Is your service currently funded by the MCFD or was it once funded by them?*
- *If yes, were the records in question created on or after January 29, 1996?*
- *If yes, do the records relate to matters or services covered by the CFCSA? Does your contract contain language suggesting the ministry owns the records?*

*If yes, to all of the above, CFCSA Part 5 may apply.*

While everyone is subject to the CFCSA's reporting requirement, most agencies will not be subject to Part 5 of the Act. If you have a question or concern in this area, contact your funding ministry's Director/Manager of Information and Privacy for further information.

## Guidelines

### ***If the Records are Governed by the CFCSA***

- 45.1 If the child is under 12, the CFCSA provides that the parents or person who has legal care of the child can exercise the child's rights under FOIPPA. The parent or legal guardian can:
- be given access to the child's records
  - consent to disclosure of the information in the record; and
  - request correction of the record.
- 45.2 If the child is over 12, the CFCSA provides that the parent or person who has legal care of the child may exercise the child's rights under FOIPPA if the child is incapable of exercising those rights themselves. In this situation, follow Guidelines 41.2 to 41.7 with the necessary changes.

### ***If the Records are Not Governed by the CFCSA***

- 45.3 If the client is under 19, the service provider should document steps she has taken to determine whether the client has the capacity to consent to the release of personal information contained in her records. The documentation should be kept in the client's file for the recommended retention period.
- 45.4 If the service provider determines that the client is not capable of consenting to the release of personal information, then the client's parent or guardian can consent to the release of information on her behalf. In these cases, the service provider should obtain the necessary documents to verify custody or guardianship and keep these documents in the client's file for the recommended retention period. (For examples of documents which can be used to verify custody or guardianship, see under question 42)
- 45.5 If the service provider believes that the parent or guardian is not acting in the best interests of the child, and access to records is denied on this basis, the reasons for this denial should be well documented; for example, the service provider may want to note in the file that based on what the child has told them, they believe that releasing the records would put the child or another person at risk of serious emotional or physical harm.
- 45.6 If the client is not capable of consenting and the referring parent has sole custody but guardianship of the child/youth is joint, the service provider may obtain consent from the custodial parent.

- 45.7 Once the client's capacity to consent to release of personal information has been determined, or the child's parent or guardian has consented to the release of this information, written consents should be obtained. The consent should set out the nature of the information to be shared, the recipients of the information, and the purpose for which it is being shared. The written consent should indicate whether it applies only to information that has already been gathered, or also applies to information that may be obtained in the future. The written consent should be signed by the client or the parent or guardian and dated. The written consent should be time-limited.
- 45.8 If the client has difficulty reading a written consent because of language difficulties, a low level of literacy, or a disability, then the service provider should document the fact that oral consent has been obtained from the client. The oral consent should be subject to the same limitations as any written consent and should be kept in the client's file for the recommended retention period.
- 45.9 If the adult requesting access to client files or information is the client's parent, and there is no court order, custody, or separation agreement in place regarding custody or guardianship of the client, the service provider should request that the parent demonstrate that the client lives with her. For example, the counsellor could request to see a letter addressed to the child or any child identification indicating their address, such as a child safety identification card, and compare this with the address of the referring parent. Any evidence presented by the adult requesting access should be documented and kept in the client's file for the recommended retention period.
- 45.10 If the client does not have the capacity to consent to the release of information, then the service provider should advise her that information about the counselling process and possibly about him or her may be shared with the parent or guardian if requested.
- 45.11 If the client has the capacity to consent to the release of information, and the service provider feels it would be beneficial for parents or guardians to be made aware of aspects of the counselling process or other service being provided, the client should be encouraged to inform these individuals themselves. If the counsellor intends to provide the information to parents or guardians directly, then a consent for the release of this information should also be obtained from the client prior to releasing the information.

**46. *If the client is not capable of consenting to the release of information, what documents are considered acceptable evidence of the referring adult's custody or guardianship?***

**Guideline**

46.1 Apply the Guidelines under question 42 with the necessary changes.

**47. *What if the referring parent or guardian or their lawyer requests access to client files in preparation for a custody dispute?***

**Guideline**

47.1 If the service provider receives a request – in the form of a letter for example – from the parent, guardian, or their lawyer for access to client files or for information contained in the files, then the considerations and guidelines set out under question 45 apply. If the client is capable of consenting and the agency wishes to release information, the client must consent to the release of information. If the client is not capable, then the parent or guardian can consent on their behalf.

**48. *What if the alleged abusive parent or guardian or their lawyer requests access to client files in preparation for a custody dispute?***

**Guideline**

48.1 If the service provider receives a request – in the form of a letter for example – from the abusive parent or guardian or their lawyer for access to client files or for information contained in the files, then the considerations and guidelines set out under question 45 apply. If the client is capable, then the client must consent to the release of information before the agency proceeds. If the client is not capable, and the agency is not going to argue against the release of information, then the parent or guardian can consent on her behalf. If the alleged abusive parent shares custody or is the guardian of the child but the service provider believes that releasing the client's files or information contained in the files could reasonably be expected to threaten the client's or anyone else's safety or mental or physical health, then access to the child's files can be denied. If access to records are denied to the parent or guardian, then the reasons for denying access should be noted in the file, e.g. that the service provider believes, based on what the child has told them, that releasing the information would put the child

at risk of emotional or physical harm. The reasons should be retained in the file for the recommended retention period.

**49. What if a Family Court Counsellor, Social Worker, or Psychologist requests access to client records in the context of a custody dispute?**

**Background**

Under the *Family Relations Act*, the court may order an investigation into a family matter in the context of a custody dispute. The court will designate a person to conduct the investigation to determine what is in the best interests of the child. This person will prepare a report for the court on the results of the investigation. (This Report is sometimes referred to as a “Section 15 Report”.) Often the investigation will be carried out by a family court counsellor, social worker, psychologist or psychiatrist. It may also be carried out by someone else to whom both parties to the proceeding have consented.

**Guidelines**

- 49.1 In the context of a custody dispute, if a family court counsellor, social worker, or other individual requests client records for the purposes of conducting an investigation into family matters under section 15 of the *Family Relations Act*, before releasing any records, request a copy of the court order directing that the investigation be conducted and designating that person as the investigator. The service provider should also request that the designated investigator provide copies of any consents s/he has obtained for the release of client information. If a broadly-worded consent is provided, the service provider should insist that the producer of the consent form be specific about what records are needed.
- 49.2 If a copy of the court order and the necessary consents are provided, then client records should be released to the investigator. The service provider may also consult orally with the investigator if necessary. Copies of the court order and consents should be kept in the client file for the recommended retention period.

## **50. What other types of situations could arise in which the release of client records might be required?**

### **Background**

The *CFCSA* section 65 provides that in the context of a child protection investigation, a director (a person designated by the Minister for Children and Family Development) may apply to the court for an order requiring a person or organization to produce a record to the director if there are reasonable grounds to believe the record contains information necessary to determine whether the child is in need of protection.

Generally, in the absence of a court order, a community-based agency is not legally required to release client records to an MCFD social worker. If, however, the agency's records are under the custody or control of their funding ministry, then MCFD has the right to access the records without a court order provided the information is necessary to enable the director to perform her/his functions under the Act. (*CFCSA* section 96.)

It is also possible that an abusive or non-custodial parent might try to bring a civil case against a service provider or her/his agency for failing to involve the parent in the child's counselling or other service delivery process. The parent might, for example, allege professional negligence or some other civil cause of action. This process would be initiated by a Writ of Summons and a Statement of Claim. If the civil case goes forward, then the files might be reviewed as part of the discovery process.

### **Guidelines**

- 50.1 If the service provider receives a request from the MCFD to produce a client record for the purposes of determining whether the child is in need of protection under section 65 of the *CFCSA*, the service provider is not legally required to release client records to the ministry unless there is a court order to this effect. The counsellor should consider releasing the record voluntarily, however, unless compelling reasons exist for refusing to do so.
- 50.2 If the service provider receives a request from the MCFD to produce a client record for the purposes of determining whether the child is in need of protection, the service provider should consider advising the client or her guardian that the records have been requested unless this would place the client at further risk of emotional or physical harm.
- 50.3 If the agency's records are under the custody or control of the funding ministry and the service provider receives a section 96 request from the MCFD to provide information in client files that is necessary for the

director to perform her/his functions under the CFCSA, then the service provider should ask for the request in writing and for written confirmation of the ministry's designation of the MCFD staff person as a director under section 91 of the Act. (See Introduction: *The Freedom of Information and Protection of Privacy Act* for factors affecting whether the records are under the ministry's custody or control.)

- 50.4 If the service provider or the agency is served with a Writ of Summons or Statement of Claim, they should consult with a lawyer.

If you are uncertain about whether your records are under the custody or control of your funding ministry, contact your ministry contract manager or the ministry information and privacy branch for clarification.



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# Appendix I

## Glossary

**Agency:** includes community-based agencies which receive funding and deliver services pursuant to the following programs:

1. Stopping the Violence Counselling
2. Community Based Specialized Victim Assistance
3. Transition Houses
4. Children Who Witness Abuse
5. Outreach

These funded programs are often housed in agencies which may also operate a variety of family service programs. The Guidelines, however, are only meant to apply to services performed under listed programs 1- 5.

**Agency Staff:** paid and unpaid support or administrative staff, counsellors, victim support workers, transition house support workers and outreach workers.

**BCASVACP:** BC Association of Specialized Victim Assistance and Counselling Programs

**BCYSTH:** BC/Yukon Society of Transition Houses

**CFCSA:** BC's *Child, Family and Community Service Act*

**Child:** someone under 19 years of age

**Clients:** women, children, and other survivors of violence who are being provided with crisis intervention, emergency shelter, information, and support regarding the justice system, or who are being provided with counselling services.

**CARF:** Commission on Accreditation of Rehabilitation Facilities

**COA:** Council on Accreditation for Children and Family Services

**CWWA:** children who witness abuse

**File:** a folder, possibly computerized, or other container in which records (such as notes) are arranged for reference or retrieval.

**FOIPPA:** BC's *Freedom of Information and Protection of Privacy Act*

**Limitation Period:** the period of time after which legal actions – related to an alleged civil or criminal assault or another wrongful act – can no longer be initiated.

**MPSSG:** BC's Ministry of Public Safety and Solicitor General

**MCFD:** BC's Ministry for Children and Family Development

**Personal Information:** information that would identify a particular person. For example, information such as their name, home address and phone number, medical information, marital status and education. Personal information does not include contact information which is meant to enable someone to be contacted at a place of business for business purposes.

**PIPA:** *BC's Personal Information Protection Act*

**Potential Clients:** individuals who have requested but have not yet received services. Potential clients may be on a wait list or may be in the process of filling out an agency intake record such as an application for service.

**Pronoun usage:** most adult survivors of sexual assault and violence in intimate relationships are female and the perpetrators male. For this reason, these Guidelines use the words “woman”, “she” and “her” to refer to clients, and “man”, “he” and “him” to refer to perpetrators. We believe this approach reflects the gender dynamics present in most cases involving adults. At the same time, we recognize the need for services to address violence against women and men in same sex relationships and vulnerable males in heterosexual relationships. We also acknowledge that clients of the children who witness abuse program could be of either gender.

**Record:** all recorded information regardless of its physical format.

A record might include:

- a filled out form
- handwritten, typed or computerized notes
- video or audio tapes
- photos

**Server:** A server is a piece of equipment that stores information from computers on a network.

**STV:** stopping the violence

**Operational Record:** a record which relates to the operations or services provided by the agency according to its mandate. Operational records are distinct from administrative records which relate to the management of the agency. Agencies will have a variety of specific forms or systems of documentation. These Guidelines deal primarily with operational records of two basic types:

- 1. Intake Record:** refers to the record containing details of the agency's first contact with potential clients. It might include, for example, an application for service or an intake form. It might also include the record of hospital, police or other system accompaniment by agency staff or volunteers.
- 2. Service Record:** refers to the running record which documents the ongoing service the client has received from the agency. For example, a service record might include documentation of justice system information and practical support provided by the agency. Such

documentation might consist of: letters of advocacy written on behalf of a client, Crime Victim Assistance forms, release or consent forms, or notes of upcoming court dates. The Service Record would also include documentation of the counselling service provided. This might consist of assessment tools, progress or case notes made during the course of counselling, consent forms, or termination summary notes.

**Service Providers:** refers to agency staff who are employees and who are delivering services as part of a contract between the agency and the provincial government.

## Appendix II

### Sample Intake Clauses

Included in this Appendix are examples of the type of clauses which could be included in agency intake forms. Special thank you to the Cowichan Women Against Violence Society in Duncan and Haven Society in Nanaimo for providing sample intake forms. Many of the sample clauses included here are adapted from the material they provided. Please note that:

- A one-size-fits-all approach to intake is not possible or desirable. The sample clauses below will need to be refined to meet the needs of your particular program.
- Included below are samples of common intake form clauses. This is not meant to be a comprehensive listing of all appropriate intake questions.
- With respect to the risk management clauses, it is important to remember that safety planning and risk assessment is a complex process. Ideally, it involves coordinated development of intervention strategies and information sharing protocols between different agencies working together at the local level. The samples provided here are not meant to be adopted in their current form but are meant to stimulate discussion and protocol development at the local level. No single checklist is a substitute for careful analysis of the complexity of risk factors which may be present in each individual case.

## **Sample Consent and Confidentiality Clause for Intake Purposes (Generic)**

---

I consent to receive the service(s) I have indicated above [*list them above*] which are provided by [*insert agency name*]. I understand that this application does not guarantee I will receive all the services I have indicated.

I also consent to having staff from the [*insert agency name*] collect personal information about me necessary for the purpose of delivering those services.

I understand that the personal information I provide is confidential. The release of any information regarding my involvement with the [*insert agency name*] may occur only with my written and signed consent subject to certain limited exceptions. These are:

- If agency staff have reason to believe that a child needs protection under section 13 of the *Child, Family and Community Service Act* they are obligated (as are the general public) to inform the Ministry of Children and Family Development;
- If agency staff have reason to believe that I am likely to cause serious physical harm to myself or another, they are obligated to inform the appropriate authorities (family doctor etc.);
- If agency staff are required by court order to disclose specific records or to attend court and give evidence.

Date \_\_\_\_\_

This agreement is in effect from [*insert start date*] until [*insert end date*].

\_\_\_\_\_  
Client name

\_\_\_\_\_  
Client's Signature

\_\_\_\_\_  
Agency staff signature

I understand that my records will be kept for [*insert agency retention period here*] and that they will be destroyed after that time.

Information about [*insert agency name*] privacy policy can be obtained by contacting [*insert position title of privacy officer*] at: [*insert phone number.*]

\*\*\*\*\*

**Basic Contact Information for Intake Purposes (Generic)**

---

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Preferred Language: \_\_\_\_\_

Interpreter needed:  Yes  No

If we need to contact you, is it safe for you if we phone?  Yes  No

Telephone: \_\_\_\_\_ day \_\_\_\_\_ evening

To insure your privacy, agency staff will not initiate conversations or contact with you outside of the agency. We leave that to your discretion.

.....

**Children (Transition Houses)**

---

Child's name	Date of Birth	Care Card No.	Health Concerns
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name of child/ren not with you at the Transition House \_\_\_\_\_

Are you the natural mother of the children?  yes  no

Does your partner have legal custody of the children?  yes  no

What if any, custody/access arrangements or orders do you have?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Can you provide copies of any court orders or written agreements regarding custody and access?  yes  no

.....

**Medical Alert (Transition Houses)**

---

**Medical or special needs:**

- access issues
- allergies
- dietary concerns
- medications
- other

Dr.'s Name: \_\_\_\_\_ Tel. \_\_\_\_\_

**Emergency contact:**

Name \_\_\_\_\_ Relationship \_\_\_\_\_

Tel. \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

.....

**Special Needs (Generic)**

---

Do you have any special needs that you feel it would be helpful for us to know about so that we can be of most support to you?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

## **Risk Management (Generic)**

---

***Safety planning and risk assessment involves coordinated development of intervention strategies and information sharing protocols between different agencies working locally. No single checklist can address the complexity of risk factors which may be present.***

### **Abuser/Offender Information (if known)**

Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address (home) \_\_\_\_\_ Work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Brief Physical Description \_\_\_\_\_  
\_\_\_\_\_

Description of Vehicle \_\_\_\_\_ Plate # \_\_\_\_\_

Does the abuser have a criminal record? \_\_\_ yes \_\_\_ no

Does the abuser have access to weapons? \_\_\_ yes \_\_\_ no

Does he know your location? \_\_\_ yes \_\_\_ no

Does he know the location of the Transition House? (if applicable) \_\_\_ yes \_\_\_ no

Does he know you are receiving services from this agency? \_\_\_ yes \_\_\_ no

Will he be looking for you? \_\_\_ yes \_\_\_ no

Does he use alcohol or drugs? \_\_\_ yes \_\_\_ no

Has he made threats? \_\_\_ yes \_\_\_ no

Has the violence been escalating? \_\_\_ yes \_\_\_ no

Does he have mental health problems? \_\_\_ yes \_\_\_ no

### **Current Situation**

Were the police/RCMP called? \_\_\_ Yes \_\_\_ No

If yes, Officer's Name \_\_\_\_\_

Charges laid? \_\_\_ Yes \_\_\_ No

Is/has there been a restraining order or peace bond? \_\_\_\_\_

**Current Risk**

\_\_\_\_\_ High (abuser actively looking for woman and knows her location)

\_\_\_\_\_ Moderate (abuser is actively looking but does not know where she is or abuser is not expected to be looking for the woman)

**Risk to Children**

If you have children, describe the abuser's relationship with them \_\_\_\_\_

Has the abuser ever physically \_\_\_\_\_ or sexually \_\_\_\_\_ abused any of your children?

If yes was this reported to the Ministry of Children and Family Development  
\_\_\_yes \_\_\_no

**If agency staff have reason to believe a child needs protection they are required by law to report it to the Ministry of Children and Family Development. If at all possible we will support you when a necessary call must be made. If you cannot or will not report child abuse then agency staff will make the report themselves.**

\*\*\*\*\*

**Consent to Release Information to Third Parties**

---

Date\_\_\_\_\_

I, \_\_\_\_\_, do hereby give permission to the staff of [*insert agency name*] to provide information to the following:

- ( ) RCMP/Police
- ( ) Hospital
- ( ) My medical Doctor
- ( ) My lawyer
- ( ) Other Agency \_\_\_\_\_

The following specific information may be disclosed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This information may be disclosed only for the following purposes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This agreement is in effect from

until

\_\_\_\_\_  
\_\_\_\_\_

Client's signature

Witnessed by

\*\*\*\*\*

**Consent to Collect Information from Third Parties**

---

Date \_\_\_\_\_

I, \_\_\_\_\_, do hereby give permission to the staff of [*insert agency name*] to collect information from the following:

- RCMP/Police
- Hospital
- My medical Doctor
- My lawyer
- Other Agency \_\_\_\_\_

The following specific information may be collected:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This information may be collected only for the following purposes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This agreement is in effect from

\_\_\_\_\_ until \_\_\_\_\_

\_\_\_\_\_  
Client's signature

\_\_\_\_\_  
Witnessed by

## Appendix III

### Risk Assessment Tools

Two risk assessment tools in current use in BC are:

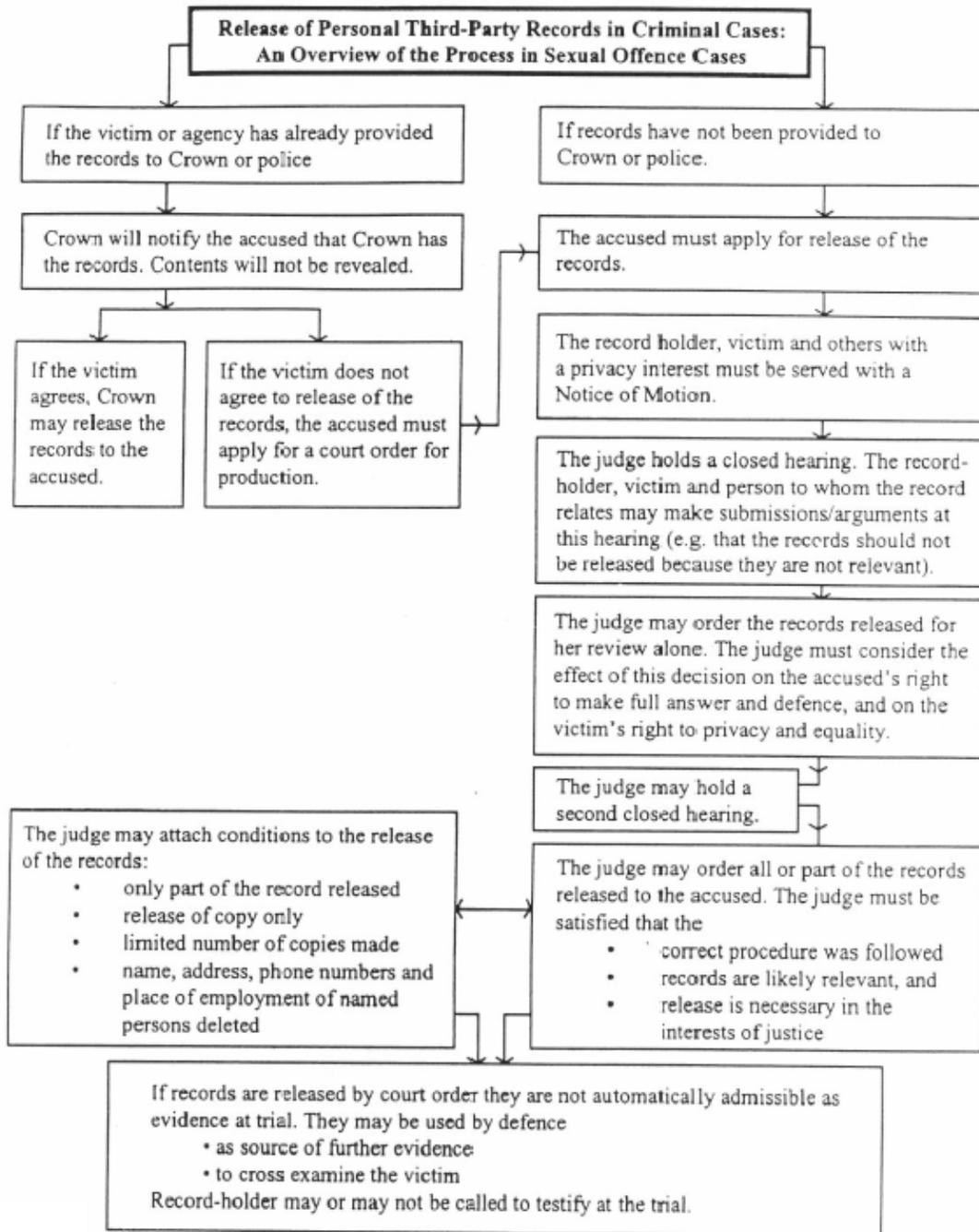
- Spouse Assault Risk Assessment (SARA) used by probation officers; and
- Brief Spousal Assault Form for Evaluating Risk (B-SAFER) used by police.

The abuser risk factors used in SARA and B-SAFER include:

1. The abuser's use of violence
2. Violent threats, ideation, intent
3. Escalation of Physical/Sexual Violence or Threats
4. Violations of Civil and Criminal Court Orders
5. Negative attitudes about violence against women in relationships
6. Other criminality
7. Response to shifts in power and control dynamics
8. Employment or financial problems
9. Substance abuse problems
10. Mental health problems

# Appendix IV

## The Procedure for Disclosure of Records for Criminal Code Sexual Offences



## **Step 1: The Accused Applies to Have Records Released**

If the accused wants to get access to records containing information about the survivor, the accused's lawyer must apply in writing to the trial judge. The application (called a Notice of Motion) may not be made to a judge or justice presiding at any other proceedings, including a preliminary inquiry. The application must include:

- particulars identifying the record that the accused wants to have released
- the name of the person who has possession or control of the record (the record holder)
- the grounds the accused is relying on to establish that the record is relevant to the case.

## **Step 2: The Application for Production May be Made Soon After the Preliminary Inquiry or During the Trial**

Generally, before making an application for production of records, defence counsel will need to get some information about the services or counselling the survivor may have received. To get this information, defence counsel may ask the survivor questions during either the Preliminary Inquiry (if the case is being tried in Supreme Court), or during the trial (if the case is being heard in Provincial Court). This questioning is sometimes called "laying the foundation for production of records". During cross-examination, defence counsel is entitled to pose questions that attempt to establish that the survivor received counselling, from whom and the general character of the discussions involved in the service received. The questions should not be used to determine the actual contents of the records since this circumvents the procedure set out in Code sections 278.1 to 278.91

## **Step 3: If the Crown Prosecutor Already has the Records**

If the prosecutor has the records, s/he must notify the accused that s/he has them, but must not reveal their contents. Unless the survivor has expressly waived the requirement of the formal application process, Crown cannot release the records to the accused without a court order. If the survivor provides a waiver, Crown may release the records to the accused without the court application.

## Step 4: Legal Documents the Record Holder Will Receive if an Application for Records is Made

You will be served with a:

- Notice of Motion, and
- “Subpoena to a Witness in the Case of Proceedings in Respect of an Offence Referred to in Subsection 278.2(1) of the *Criminal Code*.”

You may also be served with an affidavit or sworn statement which outlines the evidence the accused is using to establish that the records are relevant. For example, the affidavit may be a sworn statement to the effect that:

- the survivor (Grace Smith) testified at the Preliminary Inquiry that she attended counselling at Timbuktu Sexual Assault Centre from May 1994 to the present time
- that Grace Smith initially approached Timbuktu Sexual Assault Centre to receive counselling in relation to the alleged sexual assault committed by the accused
- that Grace Smith discussed details of the alleged sexual assault with two counsellors at the Timbuktu Sexual Assault Centre: Wendy Brown and Susan Gray.

The affidavit may also have documents attached in support, such as a transcript of the survivor’s testimony at the preliminary inquiry or agency policies regarding record-keeping.

The Notice of Motion sets out the grounds for the application and states the time and place of the hearing. It also sets out the type of order (or “relief”) being requested by the accused. (See Appendix V for a sample Notice of Motion.)

### ***The Notice of Motion may contain a section that looks something like this:***

The Notice of Motion may include specifics regarding the type of information the accused is hoping to find in the records. Examples might include:

- descriptions of the alleged offence or the surrounding circumstances
- information showing that the survivor suffers a psychological disorder that would impair her ability to accurately remember events or to accurately perceive the acts of others

The subpoena requires the record holder to attend the hearing. Generally, the subpoena must be served seven days before the hearing date. It may be served closer to the hearing date if a judge decides this is in “the interests of justice”. (See Appendix VI for the required subpoena format.)

*The accused must follow the correct procedure. If, for example, the survivor isn't served with the Notice of Motion or the appropriate seven day notice requirement isn't satisfied, then the application for release of the records may fail and the records will not be released. Inform your lawyer if you believe the procedural rules weren't followed.*

### **Step 5: The Application Must Also be Served on Others Who are Affected**

The Notice of Motion, but not the subpoena, must also be served on the survivor, prosecutor and on any other person to whom, to the knowledge of the accused, the record relates. This might include a third party about whom there is also information in the record. If, for example, the records relate to a survivor who participated in group counselling, the notes may include information about other group members. If so, these group members should also be served with the Notice of Motion. If you are counselling a child survivor and her mother participated in some of the sessions, she may have a privacy interest separate from her child's and should also be served with the Notice of Motion. If others involved are not served then inform your lawyer because the application for release of the records may fail.

### **Step 6: The Judge Holds a Hearing which is Closed to the Public**

An in camera or closed hearing is held to determine whether the record holder should be ordered to produce the records to the court so the judge alone can review them.

The record holder, survivor and any other person to whom the record relates, may appear and make submissions at the hearing but they are not required to do so. They may speak on their own behalf regarding production of the records or may hire a lawyer to represent them. It is an offence to publish anything that is said regarding any record referred to in the closed hearing.

## **Step 7: The Judge Decides Whether to Order the Records Produced so S/he Can Review Them in Private**

To make the order, the judge must be satisfied that:

- the correct procedure was followed
- the accused has established that the record is likely relevant to an issue at trial or to the competence of a witness to testify, and
- the production of the record is necessary in the interests of justice.

In deciding whether to order the records produced, the judge must consider the salutary and deleterious (positive and negative) effects of her/his decision on the accused's right to make full answer and defence and the survivor's right to privacy and equality. In doing this, the judge must consider the following factors:

- the extent to which the record is necessary for the accused to make a full answer and defence
- the probative value of the record (will the record provide information regarding questions before the court)
- the nature and extent of the reasonable expectation of privacy with respect to the record (did the survivor expect or was she told that the records would remain private)
- whether production of the record is based on a discriminatory belief or bias (is the accused's application for release based on sexual stereotypes such as the fact that unchaste women are more likely to allege sexual assault to protect their reputation)
- the potential prejudice to the personal dignity and right of privacy of any person to whom the record relates
- society's interest in encouraging sexual offence survivors to report
- society's interest in encouraging sexual offence survivors to obtain treatment
- the effect of the decision on the integrity of the trial process.

If the judge decides not to order production of the records to the court, the documents will be kept in a sealed package until the appeal period has expired. If the judge orders that all or part of the records should be produced, s/he reviews them in the absence of the parties.

## Insufficient Grounds

According to *Criminal Code* section 278.3(4) any one or more of the following assertions by the accused are not sufficient on their own to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify:

- that the record exists
- that the record relates to medical or psychiatric treatment, therapy or counselling that the survivor has received or is receiving
- that the record relates to the incident that is the subject matter of the proceedings (e.g. the fact that the survivor sought counselling after she was assaulted isn't enough to establish that the counselling records are therefore likely relevant)
- that the record may disclose a prior inconsistent statement of the survivor (e.g. that she said something different to the counsellor than she did to the police)
- that the record may relate to the survivor's credibility
- that the record may relate to the reliability of the survivor's testimony merely because the survivor has received or is receiving psychiatric treatment, therapy or counselling (e.g. the claim that anyone who seeks counselling is unreliable)
- that the record may reveal allegations of sexual abuse of the survivor by someone other than the accused (e.g. the records show that the survivor made previous allegations of sexual assault involving other perpetrators)
- that the record relates to the presence or absence of a recent complaint
- that the record relates to the survivor's sexual reputation; or
- that the record was made close in time to the complaint or to the activity that forms the subject-matter of the charge against the accused (e.g. simply because the survivor received counselling shortly after the sexual assault doesn't mean the records are likely relevant to the case)

It will be up to the trial judge to interpret the precise meaning of Insufficient Grounds as described in Section 278.3(4).

## **Step 8: After the Judge Has Reviewed the Records, S/he May Hold a Second Closed Hearing**

If this happens, the judge will hear submissions about whether any of the records reviewed should be disclosed to the accused.

## **Step 9: The Judge May Order that All or Part of the Record be Released to The Accused**

To make this order the judge must be satisfied that:

- the correct procedure has been followed
- the record or part of record is likely relevant to an issue at trial or to the competence of a witness to testify, and
- production is necessary in the interests of justice.

As with the decision as to whether the record should be produced to the judge alone, the judge here must also consider the positive and negative effects of the determination on the accused's right to make full answer and defence and on the survivor's right to privacy and equality. The judge must take into account the same constitutional and public policy considerations as before.

## **Step 10: The Judge May Release Records with Conditions Attached**

Possible conditions might include:

- editing of the record as directed by the judge
- a copy of the record rather than the original will be produced
- the accused and his lawyer will not disclose contents of the record to any other person, except with the court's approval
- the record will only be viewed at the court offices
- only a limited number or no copies of the record will be made
- information about any person named in the record, such as their address, phone number and place of employment, be severed (or deleted) from the record.

## **Step 11: The Judge Must Provide Reasons for Ordering or Refusing to Order Production of the Record**

The judge must provide written reasons as to why a record or part of a record should or should not be disclosed.

## **Step 12: If Released, the Records May or May Not be Admitted as Evidence at Trial**

A production order does not automatically mean the contents of the records will be introduced as evidence at the trial. Rather than introducing them as evidence, the defence may simply use the records as background information to prepare their case. For example, the records may help the defence locate additional information or evidence, e.g., other records or physical evidence. Records may also be used to prepare for cross-examination of the survivor. If the records are not introduced as evidence, the recordholder (e.g. the agency) may not be called to testify at trial.

## **Step 13: The Publication of Records is Prohibited**

It is an offence for anyone to publish or broadcast the records' contents or the proceeding of the closed hearing.

# Appendix V

## Notice of Application for Production

Provincial Court of British Columbia

**B E T W E E N:**

**HER MAJESTY THE QUEEN**

**Respondent**

– and –

**[COMPLAINANT / WITNESS]**

**Respondent**

– and –

**[CUSTODIAN]**

**Respondent**

– and –

**[OTHER THIRD PARTY WITH PRIVACY INTEREST]**

**Respondent**

– and –

**JOHN BROWN**

**Applicant/  
Accused**

### NOTICE OF APPLICATION FOR PRODUCTION OF THIRD PARTY RECORDS

TAKE NOTICE that an application will be made by Counsel on behalf of the Applicant, at the Provincial Court of British Columbia, 101 Burdett St., Victoria, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 1998 at 10:00 in the forenoon or as soon thereafter as the application may be heard for an Order:

1. That all records held by Timbuktu Sexual Assault Centre in relation to Grace Smith be produced to this Honourable Court
2. That such portions of the records held by Timbuktu Sexual Assault Centre in relation to Grace Smith as this Honourable Court may deem appropriate be produced to the Applicant.

THE GROUNDS FOR THE APPLICATION ARE:

1. That the Applicant is charged by an Indictment dated \_\_\_\_\_ that on or about May 1, 1997 he committed a sexual assault upon Grace Smith.

2. That Grace Smith testified at the preliminary hearing in this matter to the following effect:
  - a) That Grace Smith attended counselling sessions with Timbuktu Sexual Assault Centre from at least May 1994 to the present time
  - b) That she discussed the allegation which forms the basis of the charge of sexual assault with two counsellors at Timbuktu Sexual Assault Centre, Wendy Brown and Susan Gray.
  - c) That she first began to disclose the allegation to counsellors at Timbuktu Sexual Assault Centre in early November of 1995, and that in disclosing the allegation she gave a narrative description of the alleged offence.
  - d) That she disclosed the allegation to counsellors at Timbuktu Sexual Assault Centre because she was told by them that unless she shared her feelings and talked about what happened, she couldn't heal.
3. That it is the practice of Timbuktu Sexual Assault Centre to take notes of the contents of all counselling sessions and to keep those records for seven years.
4. That the Applicant requires access to information contained in the records of Timbuktu Sexual Assault Centre regarding Grace Smith in order to make full answer and defence to the charge against him pursuant to his statutory rights under s. 650(3) of the *Criminal Code* and s. 7 of the *Canadian Charter of Rights and Freedoms*.
5. Such further and other grounds as counsel may advise and this Honourable Court may permit.

IN SUPPORT OF THIS APPLICATION THE APPLICANT RELIES UPON:

1. The within notice of application.
2. The affidavit of Glen Golden (articled student) sworn on the \_\_\_\_\_ day of \_\_\_\_\_.
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

THE RELIEF SOUGHT IS:

1. an Order that all records held by Timbuktu Sexual Assault Centre, preserved in writing, photographically, electronically, on videotape, or by any other means be produced to this Honourable Court for review pursuant to the procedure set out in *Criminal Code* sections 278.1 to 278.91.
2. an Order that such portions of the records held by Timbuktu Sexual Assault Centre in relation to Grace Smith as this Honourable Court deems relevant to an issue at trial or the competence of Grace Smith to testify be produced to the Applicant, and in particular, without restricting the generality of the foregoing:
  - a) any information tending to indicate that the complaint was made because of pressure from counsellors.
  - b) any narrative description of the alleged offence or its surrounding circumstances.

- c) any information tending to indicate that Grace Smith experiences abnormal mental states which would impair her ability to accurately perceive the actions of other, or to accurately recall events.

THE APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION:

1. By service through counsel Bob Blinker, 123 First St., Victoria.

Dated at Victoria this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

[signature and address of counsel]

PRODUCTION OF PRIVATE RECORDS

TO: Registrar  
Provincial Court of BC  
101 Burdett Street, Victoria, BC

AND TO: Crown Attorney  
101 Burdett Street, Victoria, BC

AND TO: Grace Smith  
469 Maple Street, Victoria, BC

AND TO: Timbuktu Sexual Assault Centre  
29 Bee Street, Victoria, BC

## Appendix VI

### ***Criminal Code* (production of records)**

#### Form 16.1

(Subsections 278.3(5) and 699(7))

#### **SUBPOENA TO A WITNESS IN THE CASE OF PROCEEDINGS IN RESPECT OF AN OFFENCE REFERRED TO IN SUBSECTION 278.2(1) OF THE CRIMINAL CODE**

Canada,

Province of British Columbia

(territorial division)

To Wendy Brown, counsellor, of the Timbuktu Sexual Assault Centre

Whereas John Brown has been charged that (*state offence as in the information*), and it has been made to appear that you are likely to give material evidence for (*the prosecution or the defence*):

This is therefore to command you to attend before (*set out court or justice*), on ..... the .....day of ..... A.D. .... at ..... o'clock in the ..... noon at ..... to give evidence concerning the said charge, and to bring with you anything in your possession or under your control that relates to the said charge, and more particularly the following: (*specify any documents, objects or other things required*).

#### TAKE NOTE

You are only required to bring the things specified above to the court on the date and at the time indicated, and you are not required to provide the things specified to any person or to discuss their contents with any person unless and until ordered by the court to do so.

If anything specified above is a “record” as defined in section 278.1 of the *Criminal Code*, it may be subject to a determination by the court in accordance with sections 278.1 and 278.91 of the *Criminal Code* as to whether and to what extent it should be produced.

If anything specified above is a “record” as defined in section 278.1 of the *Criminal Code*, the production of which is governed by sections 278.1 to 278.91 of the *Criminal Code*, this subpoena must be accompanied by a copy of an application for the production of the record made pursuant to section 278.3 of the *Criminal Code*, and you will have an opportunity to make submissions to the court concerning the production of the record.

If anything specified above is a “record” as defined in section 278.1 of the *Criminal Code*, the production of which is governed by sections 278.1 and to 278.91 of the *Criminal Code*, you are not required to bring it with you until a determination is made in accordance with those sections as to whether and to what extent it should be produced.

As defined in section 278.1 of the *Criminal Code*, “record” means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes, without limiting the generality of the foregoing, medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services record, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

Dated this ..... day of ..... A.D. .... at  
.....  
Judge, Clerk of the Court, Provincial Court Judge or Justice (*Seal, if required*)