BCSTH Legal Toolkit

General Information about Legal Issues and Court Matters in British Columbia

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BC Society of Transition Houses

Funded by BRITISH COLUMBIA

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Tips for using this publication:

You will see internet addresses for legislation, court cases and websites throughout this publication. In the future, if the address no longer exists or has been moved, you could search the name of the legislation, the court case or the organization on any search engine like Google or Yahoo to find the updated link.

1. LEGAL TOOLKIT INTRODUCTION

This project was supported through a contribution from the Civil Forfeiture Office in partnership with Victim Services and Crime Prevention Division, Ministry of Justice, Province of British Columbia. The BC Society of Transition Houses (BCSTH) gratefully acknowledges the Ministry of Justice for generously funding this toolkit.

The purpose of the toolkit is to provide front line workers legal information and resources tailored to meet the needs of the anti-violence sector. The toolkit aims to be a relevant and accessible resource regarding key legal issues and to support the services provided to women and children by increasing the legal knowledge of the anti-violence sector.

The toolkit grew out of a need identified by BCSTH based on the frequent contacts of member programs seeking assistance and training to address legal concerns. As part of the project, BCSTH member programs were asked to identify and prioritize legal issues through an on-line survey. The topics contained in the toolkit are the ones most requested by members.

The toolkit is designed to be used as an overview of key legal issues and the individual information sheets also can be used as stand-alone resources and training tools for front line workers. The toolkit will be reviewed annually and new information sheets will be added. We welcome suggestions as to revisions and new topics. The toolkit is distributed to the BCSTH member programs and is available on the BCSTH website as well.

The Toolkit provides general information about legal issues and court matters in BC. Legal advice or representation must come from a lawyer who can tell you why you should do something in a lawsuit or whether you should take certain actions in a court matter. Anyone else, such as court registry staff, non-lawyer advocates, and this toolkit can only give you legal information and general guidance regarding legal issues.

If you have any questions about this toolkit please contact BCSTH, Amy S. FitzGerald, Legal Coordinator at amy@bcsth.ca or 604-669-6943.

2. OVERVIEW OF COURTS & LEGAL RESOURCES

BRITISH COLUMBIA COURTS

Court cases are started in different courts depending on the nature of the underlying issues. There are two trial courts in British Columbia (BC), the Provincial Court and the BC Supreme Court. The Provincial Court judges are appointed by the Provincial government and the Supreme Court judges are appointed by the Federal government. The BC Supreme Court is called a superior trial court as it hears some appeals from the Provincial Court. The highest court in the Province is the Court of Appeal of BC. After the Court of Appeal of BC, the next appeal is to the Supreme Court of Canada in Ottawa. For more court information see, http://www.courts.gov.bc.ca/index.aspx

In some family court cases you can choose to start the case in the Provincial Court or the Supreme Court. Provincial Court procedures tend to be less complicated and there are no court fees. However, court fees in the Supreme Court can be waived if you are unable to pay the fees. The waiver would only apply to the court fees and not to transcript costs as that is paid to a private company. Clicklaw provides a self-help resource that contains information and template forms that a person can fill out to apply for a waiver in BC Supreme Court (Civil and Family). This resource also provides a link to BC Court on-line fillable forms. http://www.clicklaw.bc.ca/resource/2593

Federal statutes govern criminal cases and they are the Criminal Code and the Controlled Drugs and Substances Act. Under the Canadian Constitution, the Parliament of Canada is authorized to write criminal laws and rules of criminal procedure. Public Prosecution Service of Canada (PPSC) prosecutes the majority of federal crimes including drug offences and the provinces prosecute most provincial Criminal Code offenses. In the Canadian territories, PPSC prosecutes all criminal cases.

Family Law cases are governed by the Provincial Family Law Act, the Federal Divorce Act and the Federal Child Support Guidelines. The Provincial Family Law Act can apply to cases if you are married or not married and the Federal Divorce Act only applies if you are married. Regarding children, the Provincial Child, Family and Community Service Act addresses abuse and neglect and their safety and wellbeing and the Federal Youth Criminal Justice Act provides special criminal procedures for youths aged 12 to 17.

- The federal statutes can all be found at:
  http://laws.justice.gc.ca/eng/

- The Provincial Family Law Act is at:
  http://www.bclaws.ca/civix/document/id/complete/statreg/11025_00

- A Provincial Family Law Act Fact Sheet is at:
  http://www.justicebc.ca/en/fam/fla/

- The Provincial Child, Family and Community Service Act is at:
  http://www.bclaws.ca/Recon/document/ID/freeside/00_96046_01

PROVINCIAL COURT CASES

http://www.provincialcourt.bc.ca/

- **Small Claims Matters**
  Resolves disputes about debts or damages less than $25,000.

- **Family Law Matters**
  Resolves 50% of all BC Family Law matters including:
  Guardianship
  Child Support
  Parenting Arrangements
  Contact with Children
  Protection Orders
  Spousal Support
  Child, Family and Community Service Act (CFCSA) matters

- **Criminal Matters**
  Resolves over 95% of Provincial crimes and they are summary offences which are less serious crimes and a trial is held before a Provincial Court Judge.
  The penalty for most summary offenses is up to 6 months in jail and/or up to a $5000.00 fine. For example, criminal harassment (or often known as stalking) if

prosecuted as a summary offence would have a maximum penalty of 6 months. However, some summary offenses such as assault with a weapon or causing bodily harm, breach of a probation order or uttering threats have a greater sentence of up to 18 months in jail. Alternative measures or diversion are sometimes considered in minor summary offenses if the accused takes responsibility for the crime and agrees to be supervised by a probation officer while he/she completes the agreed upon contract. If the accused completes the terms of the contract, the case is dismissed. The case is restarted in court if the accused does not satisfactorily complete the contract.

There are also hybrid offences that can be brought in Provincial or Supreme Court and the Crown Counsel makes the decision as to where to bring the charge. An example of a hybrid offense is driving while impaired. The Crown counsel's decision as to where to bring the charge not only effects the court process but it also determines different sentence options. For example, possession of child pornography, if treated as a summary offense, is punishable by 6 months to a maximum of not more than 2 years less a day and as an indictable offense possession of child pornography carries a 1 to 10 year sentence.

- **Youth Offender Matters**
  Addresses youths aged 12 – 17 who are charged with Criminal Code Offenses and incorporates special procedures for young people under the Federal Youth Criminal Justice Act.

- **Traffic and Municipal Matters**
  Resolves all traffic and municipal infractions and the proceedings are governed by the BC Offence Act and the Local Government Act. Judicial Justices oversee the cases but if a Canadian Charter issue arises then a Provincial Court Judge will oversee the case. The police officer or bylaw enforcement officer prosecutes the case.

SUPREME COURT CASES

http://www.courts.gov.bc.ca/supreme_court/#

- **Family Court**
  Divorce
  Division of Family Property
  Custody/Access
  Adoption

- **Civil Court**
  Disputes over $25,000.00
  Appeals from Provincial Court, Small Claims Matters and Administrative Tribunals
  Bankruptcy
  Personal Injury
  Contract Disputes

- **Criminal Court**
  Resolves indictable or serious criminal cases ranging from theft of more than $5000.00 to murder, manslaughter, aggravated assault, sexual assault and major drug offenses. Indictable crimes have longer sentences; for example, aggravated assault carries a maximum of 14 years, assault has a maximum sentence of 5 years and assault with a weapon or causing bodily harm is 10 years. Sexual assault is punishable by up to 10 years and if the victim is under the age of 16 up to 14 years. Aggravated sexual assault is up to life in prison with minimum sentences in specific cases such as child victims under the age of 16 where the sentence identifies a 5 year minimum to life as a maximum. A conviction of indictable uttering of threats offences is punishable by up to 5 years and indictable criminal harassment is not to exceed 10 years. A conviction on a first-degree murder charge carries a minimum mandatory sentence of life in prison with no chance of parole for at least 25 years.

  When faced with an indictable offense, the defendant can choose between a trial before a Provincial Court Judge, a BC Supreme Court Judge or a BC Supreme Court Judge and jury.

BC CROWN COUNSEL POLICY MANUAL

In BC, the Crown Counsel or prosecutor office is in the Criminal Justice Branch of the Ministry of Justice. The Branch has published Crown Counsel Policy Manuals that guide their work. Relevant policies are discussed below and links are provided for your review. All the Crown Policy Manuals can be found here:

http://www.ag.gov.bc.ca/prosecution-service/policy-man/

- **Spousal Violence**
  The Spousal Violence Policy recognizes the severity and prevalence of relationship violence and mandates a "pro-active, coordinated and vigorous" response. All spousal violence cases are classified as "K" files and the crimes vary but the criteria is that the intimate partner is the target of the criminal action although the partner does not need to be the direct victim. The charge assessment for spousal violence is whether there is a substantial likelihood of conviction and if so, whether a prosecution is required in the public interest which is not based solely on the victim's wishes. The policy recognizes the power dynamics in relationship violence cases and considers breaches of court orders as risk factors for future violence. The policy is guided by the safety of the victim and the victim's family. It details that mutual charges should be rarely prosecuted and that cases should be reviewed with a primary or dominant aggressor analysis.

  The Policy recommends that spousal violence cases be reviewed "expeditiously" and that they be given priority in assessment evaluations.

  The policy also requires that Crown advise victims of the availability of victim services and consider publication bans and testimonial accommodations for witnesses. The Policy cites:

  The BC Victims of Crime Act
  http://www.bclaws.ca/civix/document/id/complete/statreg/96478_01,

  and the Branch Policy on victims of crime

Victims of Crime - Providing Assistance & Information to - VIC 1
http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/VIC1-VictimsOfCrime.pdf

Victim Assistance Programs – Providing Information to - VIC 2
http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/VIC2-VictimAssistancePrograms-ProvidingInfo-18Nov2005.pdf

as all requiring prompt and timely information provided to the victim about any developments in the case.
http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/SPO1-SpousalViolence.pdf

- **Crimes Against Children and Vulnerable Youth**
  The Crown Counsel Policy cites *R.v.L (D.O)*, (1993) 4 SCR 419 to support protective treatment for children as victims and witnesses and special accommodations in the court process. This protective treatment involves specialized streamlined victim services, specially trained prosecution handling the case from beginning to end, priority on victim scheduling along with privacy protections in court documents, bans on publication and testimonial aids and protections.

  http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHI1-Children_VulnerableYouth-CrimesAgainst.pdf

- **Alternative Measures**
  Alternative measures are considered in offences if it is not inconsistent with the protection of society and the prosecutor is satisfied that the measures are appropriate when considering the needs of the defendant, the victim and society. Except where prohibited by statute, alternative measures can be considered in all cases where they can achieve the same result as a prosecution. More serious offenses, such as murder, aggravated assault, aggravated sexual assault are excluded. However, cases of sexual assault against adults, criminal harassment and spousal assault can be considered for alternative measures. To proceed the policy requires consultation with the victim and may require approval of a supervisor. Other criteria considered is whether the offender

accepts responsibility and has a history of violence or related offences and the offence must not threaten the safety of the community.

In Spousal Violence cases, alternative measures would only proceed if there is:

- No significant physical injury;
- No history of spousal violence;
- No significant risk factors for serious harm; and
- No inconsistency with the protection of society.

The Policy cautions that the Corrections program to treat spousal violence offenders (The Relationship Violence Prevention Program) is not available under this resolution and it is advisable to approve a charge and set conditions of release before making a referral so the case is still pending if the defendant does not satisfactorily complete the alternative measures.

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/ALT1-AlternativeMeasures-AdultOffenders.pdf

- **Resolutions**
  The Crown Counsel's policy regarding possible resolutions of offences notes that Sections 14 and 19 of the Canadian Victims Bill of Rights and Section 606 of the Criminal Code gives victims the right to convey their views regarding resolutions and to have their input considered. In serious injury matters, Crown counsel must make reasonable efforts to inform the victim or the victim's representative, and law enforcement and provide an opportunity for feedback. The policy also requires consultation with Regional or Deputy Regional Counsel for murder cases and cases of public concern.

  http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/RES1_ResolutionDiscns_SOPs.pdf

ACCESSIBLE BC LEGAL RESOURCES

Self-representation in court matters is increasing across Canada. 2015 figures from provincial Ministries of Justice show that self-representing litigants in trial level family court cases are consistently at or above 40% of the cases and in some provinces the percentage is far higher. The BC Court of Appeal reported that the court in 2013 saw at least one self-represented litigant in 38% of family court appeals, 24% of civil appeals and 11% of criminal appeals. Access to legal information and resources at the trial and appeal level is a critical need and below is a list of accessible options for people who find themselves representing themselves in court.

SELF REPRESENTATION IN FAMILY LAW MATTERS

- Family Lawline is staffed by lawyers that provide free legal advice and help on the phone and is paid for by Legal Services Society. 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (no charge outside Greater Vancouver). http://www.lss.bc.ca/legal_aid/FamilyLawLINE.asp

- Family duty counsel are available to give free legal advice to the public at courts. Family Duty counsel are at most provincial courts on child protection list days. The Legal Services Society lists the duty counsel hours at the courthouses at http://www.legalaid.bc.ca/
  The hours are listed under “Advice”, then under “Family Law”, “duty counsel”.

- Family duty counsel are also available for appointments at the Vancouver, Victoria and Nanaimo Justice Access Centres. Greater Vancouver 604-660-2084 or Toll Free 1-800-663-7867 and ask to be put through to 604-660-2084. In Victoria 250-356-7012 or Toll 1-800-663-7867 and ask to be connected to 250-356-7012. In Nanaimo 250-741-5447 or Toll free 1-800 578-8511. http://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legal-help/jac

- Family Justice Counsellors at the Family Justice Centres can mediate issues involving parenting arrangements, contact, child and spousal support. Family Justice Counsellors do not provide legal advice. They can make referrals to legal services and other supports. Call Service BC to find the nearest Family Justice

Centre. In greater Vancouver 604-660-2421, in greater Victoria 250-387-6121 and elsewhere in BC 1-800-663-7867. http://www.justicebc.ca/en/fam/help/fjc/

SELF REPRESENTATION IN GENERAL LEGAL MATTERS

- Access Pro Bono volunteer lawyers provide free legal advice to persons who cannot obtain legal aid or afford a lawyer. They also have specific programs that address: summary legal advice; a civil chambers program for civil appeals; a wills clinic project for low income seniors and people with a terminal illness; and a paralegal program for self-representing litigants who need assistance filling out court documents. In Lower Mainland 604-878-7400 and Toll free 1-877-762-6664.
  http://accessprobono.ca/
  http://www.accessprobono.ca/programs

- Access Pro Bono volunteer lawyers also provide free legal advice to charitable and non-profit organizations of limited means in their Solicitor's Program. The program also offers a Community Partnership Manual that outlines the steps for building a pro bono partnership between a community group and a law firm which may be useful for BCSTH programs. Lower Mainland 604-878-7400 and Toll free: 1-877-762-6664.
  http://www.accessprobono.ca/solicitors-program
  http://accessprobono.ca/legal-help-non-profits

- The Lawyer Referral Service is operated by the Canadian Bar Association BC Branch and provides a 30 minute consultation with a lawyer for $25.00. This can include family law matters and there is a process to waive the fee. Greater Vancouver 604-687-3221 and Toll Free 1-800-663-1919 (M-Fri 8:30 – 4:30).
  http://cbabc.org/For-the-Public/Lawyer-Referral-Service

- Law Students' Legal Advice Program (LSLAP) is a legal clinic at the University of British Columbia Law School. The Clinic provides free legal advice and is staffed by volunteer law students and operates 20 clinics across the Lower Mainland on a year round basis. The work of the students is overseen by two supervising lawyers. LSLAP assists low-income persons with various legal issues and offers representation on a case-by-case basis in hearings and the students can draft legal documents. Their current policies encourage at least summary legal advice.

There are certain cases that LSLAP cannot assist with such as: family law issues including divorce; wills and estates; some probate or administrative matters; traffic offenses and driving impaired cases; criminal offenses which are indictable and summary criminal cases where the Crown Counsel is seeking a jail sentence.
604-822-5791
http://www.lslap.bc.ca

GENERAL LEGAL RESOURCES

- J.P. Boyd's on-line BC Family Law Resources provide general information on family law matters including a calculator for spousal support and child support.
  http://bcfamilylawresource.blogspot.ca/
  http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law

- Clicklaw provides free access to legal information, education and help.
  http://www.clicklaw.bc.ca

- People's Law School provides free public legal education and information including information about human trafficking.
  http://www.publiclegaled.bc.ca

- Legal Services Society (LSS) is the organization that provides legal aid in BC. It provides legal representation to qualified persons, information regarding duty counsel and the family law line, self-help legal information, and free legal publications.
  http://www.lss.bc.ca

  If you apply to LSS for legal representation and you are found not eligible for legal services there is an appeal to the intake process. Your written review letter must be received by LSS within 30 days of the intake decision. There is a BCSTH information sheet in the Toolkit covering this review in more detail.

- The YWCA Metro Vancouver advocates on behalf of women and children and they have specific initiatives providing legal information regarding mothers without legal status and stopping violence against women and children.
  http://ywcavan.org/advocacy
  http://ywcavan.org/programs/legal-education/legal-education-publications

- The BC Ombudsperson's office provides information about steps to take when dealing with a public agency and it investigates complaints about unfair practices. Services are free of charge. 1-800-567-3247 http://www.bcombudsperson.ca

- The Office of the Information and Privacy Commissioner is independent from the government and promotes and protects the information privacy of BC residents. They provide information for individuals, public agencies, businesses and non-profits. Greater Victoria 250-387-5629, Outside of greater Victoria call Enquiry BC and ask for a transfer to 250-387-5629. Enquiry BC numbers in greater Vancouver 604-660-2421 and elsewhere 1- 800-663-7867. https://www.oipc.bc.ca/

LEGAL SERVICES SOCIETY AND APPEAL OF SERVICE DENIAL

Q: How does a person apply for and appeal a Legal Services Society denial of service?

Legal Services Society (LSS) is the Crown Corporation that provides free legal aid in BC. LSS has two regional centres (Vancouver and Terrace) and provides services in a total of 35 communities in BC. It provides legal representation and legal advice to qualified persons and public education and information that can be found at their offices and on their website. http://www.lss.bc.ca

Legal Aid lawyers are available for family, criminal, mental health, child protection matters, immigration and some appeal cases. BCSTH program participants may be eligible for legal aid services and consideration of legal resources at an early stage could prevent identified legal problems from escalating and could help clarify a woman's legal options.

To apply for a legal aid lawyer or to get legal advice or information:

- Call the LSS Call Centre at 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (Elsewhere in BC no charges apply) Hours: Monday, Tuesday, Thursday, Friday – 9:00 AM to 4:00 PM and Wednesday – 9:00 to 2:30 PM. Note: Services are provided in English and interpreters are available. The Call Centre welcome message is available in 6 languages: Cantonese, English, French, Mandarin, Punjabi and Spanish.

- Go to a legal aid office or a courthouse intake location. For a list of locations and their office hours: http://www.lss.bc.ca/legal_aid/legalAidOffices.php#legalAidOffices

Regarding **legal representation**, the LSS intake person determines:

1. If the legal problem is covered by the legal aid rules;
2. Whether the person meets the LSS financial guidelines; and
3. That the applicant has no other way of getting help.

The intake person will ask for information about the legal problem and the applicant's income, savings and assets. Required information includes:

- Proof of income (which can include 2 recent pay stubs, a recent welfare stub or a recent income tax return or bank records if seasonally or self-employed);
- Proof of the value of assets (assets are things that are owned such as a home, real and personal property, vehicles, RRSPs and business assets); and
- Any papers related to the case.

If the legal problem is covered by the legal aid rules, the applicant's net monthly household income and assets must be at or below the LSS financial guidelines. The intake legal assistant will conduct this calculation. Monthly income consists of:

- Work;
- Social assistance;
- Pension plan or old age security benefits;
- Disability pensions or benefits;
- Child or spousal support;
- Student loans;
- Rent from boarders or rental property; and
- Income of a spouse or common-law partner.

There are items that are excluded from income such as:

- The child tax benefit;
- The BC Family Bonus;
- GST payments;
- Tuition or book fees under student loans; and
- Children's income.

Also, there are allowable deductions such as:

- Mandatory deductions from your pay such as income tax, EI, CPP;
- Daycare expenses;
- Medical service plan payments;
- Child or spousal payments;
- Court fines;

- Travel costs for child access visits; and
- Necessary medical or dental expenses.

The legal intake assistant determines the financial eligibility. For background information, the January 2016 guidelines provide that the net monthly income is at or below the amount for the household size listed in this table.

Household Size (# of family members)	**Net Monthly Income** (after deductions)
1	$1,500
2	$2,100
3	$2,700
4	$3,290
5	$3,890
6	$4,490
7 or more	$5,090

REVIEW OF LEGAL AID REFUSAL

If legal representation is not granted, there is the **right to apply for a review** of that legal aid refusal.

The intake worker will provide the applicant a "Legal Aid Representation Services – Refused Form". This form states whether a review is available. Requests for review must be made within **30 days** from the date of the legal intake assistant's decision. Requests for review must:

- Be in writing.
- Set out the reasons for disagreeing with the decision; and
- Include copies of any supporting documents.

The request for review is mailed or faxed to:

Provincial Supervisor, Legal Aid Applications
#425 – 510 Burrard Street, Vancouver, BC V6C 3A8
FAX: 604-682-0787

The review decision may take up to **3 weeks** and the notice will come in the mail.
If the request for review is not successful, **legal advice** is still available by duty counsel, advice lawyers and the family law line phone service. To apply for legal advice, the applicant contacts the LSS Call Centre or the LSS offices. Legal Advice involves providing the applicant with legal information and can provide specific advice about a recommended legal course of action.

To obtain criminal or immigration legal advice services, there are no financial eligibility requirements. Family legal advice services have a financial eligibility test that is similar to the eligibility guidelines above. Only a legal intake assistant can determine eligibility. As of January 2016, the net monthly income must be at or below the amount for your household size listed in this table.

Household Size (# of family members)	**Net Monthly Income** (after deductions)
1-4	$3,300
5	$3,900
6	$4,250
7 or more	$5,110

If the income level is higher than these limits, and legal advice is not allowed, assistance in family related matters might still be available as follows.

- General help and brief advice is possible from family duty counsel if counsel is available. However, they do give priority to financially eligible clients.
  http://www.lss.bc.ca/legal_aid/familyAdviceLawyers.php

- Up to one hour of advice from a family advice lawyer is available if the client is in mediation and has received a referral from the family justice counsellors.
  http://www.lss.bc.ca/legal_aid/familyAdviceLawyers.php

3. OVERVIEW OF COURT RELATED ISSUES

AFFIDAVIT WRITING

Q: What is an affidavit and how can BCSTH programs assist their program participants with affidavit writing?

An affidavit is a written statement that states facts that a person swears to be the truth under oath or affirms to be true. Swearing to the truth of the affidavit involves swearing to the truth under a "sense of responsibility to god". Affirming is a non-religious alternative and involves declaring the truth to the best of your knowledge and belief. In BC, a lawyer, a notary public, certain commissioners and some court clerks are able to witness the affiant's (the person filling out the affidavit) signature and sign the form.

Affidavits are often used in court cases. The facts contained in the affidavit need to be relevant to the court case and need to state 1st hand knowledge so it is best to use the first person, "I saw…". The "affiant" can quote other people and that information should be dated or have an approximate date and indicate the name of the person who made the statement. Opinions should not be included unless the affiant is an expert witness. Witnesses in court proceedings can be questioned about any affidavits that they have endorsed.

Simple, plain language should be used that is brief and to the point. Affidavits should be clear and should not misstate or overstate any facts. Exaggeration, speculation, conclusory or argumentative language should be avoided.

For example, instead of saying "He was sloppy drunk when he arrived home" the author could say "His speech was slurred and he had a strong smell of alcohol". Instead of saying "It is selfish and cruel that he went and bought a new motorcycle when he is behind on child support" say "He has not paid child support from January though July, 2016. He bought a GSX-R600 Suzuki Motorcycle in June of 2016 that has a sale price of $12,299.00." Instead of saying "The children are terrified when they are waiting to be picked up by him" say "Mary, our 5 year old, curls up in a ball in her bed and cries and Bobby, our 7 year old, sits in the coat closet with the door closed while waiting for him to pick them up for visits."

Affidavits can be organized with headings to make the facts easier to follow, such as "Request, Background of the Parties, Facts of the Request, Summary". The facts should be listed chronologically and the paragraphs can be numbered and short, even containing one fact each. If the affidavit is hand written it needs to be legible and printing in block letters or capitals MAY be useful.

Exhibits can be attached to the affidavit and they should be numbered or lettered and be referenced in the affidavit. Exhibits are other pieces of evidence that support the facts in the affidavit such as bank statements, letters, cards, photographs, or receipts.

The affidavit should tell a clear and compelling factual story for the Judge and other parties to the case. Clicklaw recommends that a stranger to the pending case read the affidavit to make sure that the affidavit is clear. BCSTH service providers could review the program participant's affidavit in the same manner. Caution has to be exercised by the reviewers when recommending any changes to the affidavit, so that the statement still reflects the affiant's firsthand knowledge of the facts as she is the witness to the case. In some BC communities, front line workers assist the client with filling out the affidavit court forms and then assist the client with meeting with duty counsel at court to review the affidavit before it is filed with the court.

The original affidavit is filed with the court and at a minimum 4 copies should be kept to provide copies to the other parties and to make sure the author keeps a copy for herself.

In BC, the Legal Services Society and Clicklaw provide practical guidance on writing affidavits which is below for your information.

Legal Services Society (LSS) tips for writing an Affidavit:
http://www.familylaw.lss.bc.ca/resources/fact_sheets/tipsForDraftingAffidavits.php

Some Courts use their own forms for affidavits and provide templates for the public to use: http://www.familylaw.lss.bc.ca/resources/court_forms.php

Supreme Court: If the family law action is in the Supreme Court, the form a person may use is Form F30 and the rules about affidavits are set out in Rule 10-4 of the Supreme Court Family Rules. http://wiki.clicklaw.bc.ca/index.php?title=Form_F30_Affidavit

Provincial Court: If the family law action is in the Provincial Court, the form a person must usually use is Form 17 and the rules about affidavits are set out in Rule 13 of the Provincial Court Family Rules. The form is available online. See the Provincial Court Forms section.
http://wiki.clicklaw.bc.ca/index.php?title=Provincial_Court_Forms_(Family_Law)

LSS provides a sample family law affidavit:
http://www.familylaw.lss.bc.ca/assets/forms/pdf/sampleAffidavit.pdf

Clicklaw provides guidance on affidavit writing as well.
http://wiki.clicklaw.bc.ca/index.php/How_Do_I_Prepare_an_Affidavit%3F

PREPARING A CLIENT TO BE A WITNESS IN COURT

Q: How can BCSTH programs support clients who are preparing to be witnesses in court?

Going to court can be an intimidating event for any participants whether you are a litigant, a witness, a juror or an attorney. Familiarity with the court building along with the process can reduce some of the natural anxiety. Self-representing clients have an even harder task as they do not have an attorney to rely on or translate for them. Service providers can accompany their clients to court and provide support and can help them prepare for the upcoming court date.

COURT ORIENTATION

Court orientation can reduce anxiety and is recommended for all litigants and witnesses especially child or youth witnesses. Service providers can arrange for a tour of the court through the clerk's office at a quiet time of day or through the Crown Counsel office if the case is a criminal matter. Crown Counsel can accompany survivors on their tour and explain the layout of the court room and what the witness can expect or sometimes this service is conducted by a victim service program. The client can sit in the witness box and at counsel table to get a sense of the room. If the client has the time and is able to, she can also watch court proceedings with you to get a sense of what happens in a courtroom and in a courthouse. Often courthouses are busy places and can seem chaotic. Service providers can show her the layout of the courthouse and familiarize her with where the washrooms and exits and elevators are.

If the pending case is a criminal prosecution, coordinate your preparation with the Crown Counsel's office as they will have resources to help you. The Canadian Supreme Court recognizes that the "Canadian society has a vested interest in the enforcement of criminal law in a manner that is both fair to the accused and sensitive to the needs of those who participate as witnesses". *R.v.L (D.O)*, (1993) 4 SCR 419

TIMING OF COURT PROCEEDINGS

Court proceedings take time and are often slow to be completed and can be delayed for a variety of reasons. Helping a client understand that these delays are part of the system

may help her cope with possible frustration and anxiety. Canada-wide, the median length of time to complete an adult criminal court case was 118 days according to 2011-2012 Statistics Canada's data. That includes everything from shoplifting to homicide cases and representing approximately 403,000 cases. Among the provinces, the shortest length of time was in Prince Edward Island, at 29 days and the longest length of time in Quebec at 191 days with BC's timeframe at 114 days. Divorces have waiting periods of a separation for 1 year although the process can be started before that year is up. Once all the forms are submitted to the Supreme Court, on average a divorce can take up to 2 to 3 months to be finalized but it may take longer depending on how busy the Supreme Court Registry is. The registry staff can tell the applicant how long it will be before a judge looks at your divorce documents and grants the divorce. The divorce will become effective on the 31st day after the order has been signed by the judge. The 31 day period is an appeal period and a person cannot remarry until the divorce has been granted and the 31 days have transpired.

BEING A WITNESS

A witness who testifies in a court case presents evidence under oath to help the judge or jury make a decision in a legal matter.

Before a witness goes to court to testify they should review any paperwork, affidavits or notes they have about the case and they should bring these documents to court with them. The Judge may let the witness look at these documents during the court proceeding. If the case is a criminal case, the witness should discuss with Crown Counsel the paperwork they have and whether the witness should bring the documents to court.

On the day of the trial, the list of trials are posted in the lobby and indicate the courtroom. Witnesses should wait outside the courtroom until they are called to go in. A witness should not discuss her evidence with other witnesses. If the case is a criminal case, the witness would go to the Crown Counsel's office. Typically in criminal matters, the witnesses are subpoenaed to court and the subpoena requires them to go to the Crown Counsel office before the trial time. While a witness is waiting to testify there may be delays so it is wise to bring a book or magazine to read. A service provider or friend or relative may accompany you as long as they are not witnesses to the case as well.

Witnesses testify from a witness box at the front of the courtroom. The Court clerk will

read the oath and ask you to swear or affirm to tell the truth. The witnesses will be asked to say and spell their names and sometimes may be asked their addresses. If the witness does not want to disclose their address, for example for safety reasons, this should be raised with the judge and if the proceeding is a criminal matter this should be raised with Crown Counsel before the trial. The lawyer who called you will first question you and then the lawyer for the other side will question you and this is called cross-examination. The Judge may also ask you questions and what the witness calls the judge is based on the Court practice. In Provincial Court, the formal title is “Your Honour” and in the Supreme Court and the Court of Appeal the titles are “My Lady” or My Lord” or “Your Lordship” or “Your Ladyship.”

Interpreters are available for witnesses and this issue should be raised before the court proceeding with the lawyers and/or Crown Counsel.

When answering questions listen carefully to the question. Witnesses should only answer the question asked and only answer a question that they understand. Witnesses can ask the questioner to repeat a question or to explain a question. Witnesses should never answer a question that they do not understand and can respond by saying, “I do not understand, I do not know or I do not remember” to a question. Witnesses can take their time when answering and should direct their answer to the Judge and be cautious not to interrupt the Judge or the lawyers. The witness’s testimony will be recorded through a microphone which is in the witness box. Witnesses should speak clearly and loudly so their words can be recorded and can be heard by the people in the courtroom. Once the witness’s testimony is done, the Judge will excuse the witness and the witness may leave or stay in the courtroom to listen to the case unless restrictions related to witness presence have been adopted by the court and conveyed to the witness.

Reluctant Witnesses

The Crown Counsel Policy on spousal violence recognizes that witnesses often can be reluctant to testify in cases involving relationship violence. It reinforces the importance of victim services to assist witnesses and recommends that Crown counsel consider evidence other than testimony such as "independent corroborative evidence" to meet the burden of proof. The Policy recommends that witnesses including victims be subpoenaed to court and discusses cautionary steps that should be taken before applying for a material witness warrant for a victim of a crime who fails to appear in court.

As noted in the policy, Sections 13 and 19 of The Canadian Victims Bill of Rights allows that every witness has the right to request testimonial aids.
http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2015_13/page-1.html

Testimonial accommodations could include:

- Publication bans;
- Exclusion of the public or witness to be out of the public view;
- A support person;
- The witness to give testimony from a different room, behind a screen or other device;
- Cross examination by appointed counsel when the accused is self-representing; and
- The victim's identity not disclosed.

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/SPO1-SpousalViolence.pdf

Children and Youth as Witnesses

The Crown Counsel Policy Manual citing *R. v. L. (D.O)*, (1993) 4 SCR 419 recognizes that "children have to be treated differently by the criminal justice system in order to provide them with the protections to which they are rightly entitled and which they deserve." The Policy recommends that all child and youth witnesses and victims and their parents and guardians be advised of available specialized streamlined victim services along with VictimLinkBC for local victim service programs. It encourages Crown counsel to provide timely information about the case to social workers, parents and guardians who are supporting the child or youth. Also, as noted above, Sections 13 and 19 of the Canadian Bill of Rights state that every victim including children have the right to request testimonial aids to appear as a witness.

This protective treatment includes:

- identifying child and youth by initials
- publication and broadcast ban on identity of child witness or victim
- non-disclosure of identity of witnesses
- presentation of evidence by videotape
- direct indictment to avoid multiple court proceedings

Crown counsel should advise witnesses and their parent and guardian about accommodations. Testimonial aids or accommodations include:

- the exclusion of the public or testimony given out of public view
- a support person
- testimony given from a different room or behind a screen or other device
- cross-examination by appointed counsel when accused is self –represented
- an order protecting the security of the witness that is in the interest of "proper administration of justice".

http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/CHI1-Children_VulnerableYouth-CrimesAgainst.pdf

OTHER RESOURCES

Legal Service Society (LSS) Fact Sheet regarding Criminal Court Process:
http://lss.bc.ca/resources/pdfs/pubs/The-Criminal-Court-Process-eng.pdf

LSS Fact Sheet regarding Family Court Process:
http://www.familylaw.lss.bc.ca/legal_issues/legalSystemBasics.php

LSS Self Help Guides regarding Family Court Process:
http://www.familylaw.lss.bc.ca/guides/

PROTECTION ORDERS

Q: What is the difference between BC Family Law Act Protection orders and Criminal Code of Canada Peace Bonds?

In BC, there are different protection orders available through the courts that are designed to protect people experiencing violence from other people.

BC Family Law Act (FLA) protection orders, Section 183, are issued in Family Court (Provincial or Supreme).
http://www.bclaws.ca/civix/document/id/complete/statreg/11025_09

Criminal Code of Canada peace bonds, Section 810, are issued in Criminal Court.
http://laws-lois.justice.gc.ca/eng/acts/C-46/page-202.html#h-292

They are both types of civil protection orders which name individuals and contain conditions that protect people as opposed to protecting property or the community. There are similarities and differences between these two protection orders. A person could apply for both orders but that may be unnecessary; however it is a possibility depending on the circumstances. This information sheet provides background information about these two types of protection orders and provides links to detailed resources.[1]

Both orders are issued by a judge to protect one person from another and they involve conditions based on safety needs and securing the peace. When reviewing the order, moving parties should be careful that the order protects the individual people who are

[1] There are also No Contact orders issued by Judges in criminal matters when a person is charged with a criminal offense and they are released on bail or have no contact conditions imposed on them as part of their sentence. For instance, a person may be sentenced to probation with a no contact condition and probation conditions can last up to 3 years. There are also Protective Intervention Orders (PIO) under the Child, Family and Community Service Act (CFCSA) which allow for MCFD to obtain an order between an individual and a child/youth who is not in care of MCFD if the contact would cause the child/youth to need protection. These PIOs are 6 month in length although they can be extended and are enforced with criminal sanctions if violated.
http://www.bclaws.ca/Recon/document/ID/freeside/00_96046_01#section28

See Appendix 10 at
https://www.mcf.gov.bc.ca/child_protection/pdf/best_practice_approaches_2014.pdf

at risk and not just addresses where they may reside, work or go to school. When either order is served on a person it requires them to follow the conditions but they are both civil orders even though a peace bond is issued under the Criminal Code.

Peace Bonds last up to one year and applicants can reapply if they still are in fear for their safety. FLA Protection orders last until the end date identified by the Judge in the order and if not identified for 1 year. When FLA Protection Orders are issued "ex parte" (meaning from, by or for one party), the order is usually issued on a temporary basis for short period of time such as 2 weeks or a month until notice to the other party and a hearing on the merits of the application.

Both orders are sent to the BC Protection Order Registry (POR) on the day they are issued and entered into POR database upon receipt. The Family Law Act orders are sent by the civil courts and the peace bonds are sent by the police and/or Crown counsel. The POR is a confidential computer base for BC that contains all the civil and criminal protection orders issued in BC and maintains them indefinitely. The Registry is available 24/7 and a person can report a violation of the order anytime day or night and law enforcement can act to enforce the order. The system provides an instantaneous response to queries and on average, in 2015, 51 search requests were completed by POR staff each day.

Protected persons can check that their orders are registered and the details of the order by contacting VictimLink BC which is a toll-free, confidential, multilingual service available across BC 24 hours a day, 7 days a week.

- **VictimLink BC**: 1-800-563-0808 at any time, TTY accessible: Call 604-875-0885 or to call collect, call the TELUS relay Service at 711 or text at 604-836-6381 or email victimlinkbc@bc211.ca or http://www.victimlinkbc.ca

Protected persons on civil (and criminal) protection orders should also register for victim notification. Registering provides the person with information as to the status of the order and the correctional status and release of the perpetrator and any issued conditions. The program is run by Victim Safety Unit, Victim Services and Crime Prevention Division, Ministry of Public Safety and Solicitor General. It is the obligation of the protected person to check if the order is registered and protected persons should keep a copy of the orders and provide copies to relevant parties. The Victim Safety Unit can be reached at: 1-877-315-8822 and

http://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-a-victim-of-a-crime/victim-of-crime/victim-notification

If a protected person moves out of the Province, there may be additional steps required to assure the same protection elsewhere in Canada. The order may have to be registered with the courts or the police in the new location or a new order may have to be requested. Similarly, if a person moves to BC with a civil protection order from another Province, the protected person must go to a BC court and ask for an order authorizing the police to recognize the order and to enforce it and register it.
There is a Canada-wide computer system, Canadian Police Information Centre (CPIC) which is available to confirm a protection order and its terms. However, CPIC will not enter an order received directly from a protected person so the order has to come from courts or the police to be registered.

If a protected person is moving to another Canadian province the following resources help women and children to connect with shelters and services across the country.

- Canadian Network of Women's Shelters and Transition Houses
  http://www.endvaw.ca
- ShelterSafe is an on-line resource maintained by the Canadian Network which is a clickable map that serves as a fast resource to connect women and children with shelters and support services.
  http://www.ShelterSafe.ca

WHO AND WHAT TYPE OF PROTECTION

Peace Bonds protect a person, the person's children, current partner and/or property when the person fears for their safety from another person. This relationship could include a person the applicant dated, a co-worker or an acquaintance. There must be reasonable grounds that the applicant fears the other person will cause personal injury or damage to property or will commit a criminal offense.

BC Family Law Act protection orders protect a person from "family members". FLA orders have been available since March of 2013 and they have replaced the restraining orders under the previous Family Relations Act.[2] Importantly, the FLA orders are

[2] Family Relations Act restraining orders that are still valid continue to be enforceable.

available to a broader range of family members, may be applied for on a stand-alone basis, are focused on safety and enforced under the Criminal Code.
A family member is defined as: a person you were married to, live or lived with in a marriage like relationship no matter how long, your child's parent or legal guardian, a relative of any of these people who lives with them, a relative of yours who lives with you and your own child. The FLA order can protect the applicant, the applicant's children and other family members that live together or any other children in the home of the applicant, partner of the child's parent or guardian.

FLA orders are designed to protect you from "family violence" by a family member which includes physical abuse or attempts, including being denied necessities, emotional or mental abuse such as harassment, stalking, threatening or having your property damaged, sexual violence or attempts, and children being exposed to family violence.

HOW A PERSON APPLIES

An applicant does not need a lawyer to apply for a peace bond. The applicant contacts the RCMP or municipal police to ask for it. The legal name is an "810 Recognizance". If the Office agrees that you have reasonable grounds to proceed, the officer will send a report to the Crown Counsel or prosecutor to review. If the Officer does not believe the applicant has reasonable grounds, the applicant can still go on their own to the court and apply for a peace bond with a Justice of the peace. The sworn information will be reviewed by a judge and a hearing will be held.

An applicant does not need a lawyer to apply for a FLA protection order but consulting with a legal advocate, Legal Aid or duty counsel before applying is advisable.[3] These people, even if they do not represent the applicant in court, can assist the applicant with making sure the standard of proof is met in the application and affidavit and can assist with the service of the order and ensure that the terms of the order are as protective as possible.

In some communities, because of law enforcement's longstanding familiarity with the peace bond orders, applicants are finding these orders more effective. The assistance from law enforcement can be very helpful in not only obtaining the order, but also serving the order and enforcing the order if there are breaches. Every person must

[3] The BCSTH Legal Toolkit has an information sheet, "Overview of Accessible BC Legal Resources".

determine which order will be the most protective and effective for them and front-line workers can assist women in making that determination by assessing the pros and cons of both orders along with the resources available in their community.

COURT FEES

There is no fee to apply for a peace bond. There is no fee to apply for an FLA protection order in Provincial Court but you must pay a fee to apply in Supreme Court unless you qualify for legal aid. Also, there is a process to ask the Supreme Court to waive the fees even if you do not quality for legal aid. The waiver process is discussed in the BCSTH Legal Toolkit at "Overview of Courts and Legal Resources – British Columbia Courts".

SERVICE OF THE ORDER

The peace bond is served by law enforcement and typically the municipal police or RCMP persons who have assisted with the application for the order. Service of an FLA protection order is a mixed practice. In some courts, sheriffs are serving the orders and in other courts the moving party or their lawyer is required to serve and they may hire private servers whose costs vary but if it is a local service the typical cost is $100.00.

BREACHES OF THE ORDER

Under both orders, if the person who is served with the order disobeys the conditions then those actions can be charged as a criminal offence. Both types of orders are enforced by the municipal police and/or the RCMP and they can arrest the person for disobeying the conditions.

The Crown Counsel Policy Manual regarding Spousal Violence, discusses the dynamics of relationship violence and the importance of charging breach offences to address repeat violence and intimidation. In the policy, a breach of a court order is also an "identified risk factor for future violence" and the policy states that breaches of these orders should be considered particularly when the breached conditions relate to safety. It is recommended that Crown Counsel review both the Spousal Violence and Charge Assessment Guideline policies when determining whether to bring breach charges.

http://www2.gov.bc.ca/gov/content/justice/criminal-justice/bc-prosecution-service/crown-counsel-policy-manual

CONFLICTING COURT ORDERS

The Family Law Act, Section 189, provides guidance on conflicting orders and clarifies that safety-related protection orders trump other civil or criminal non-protection orders. For example, a Family Law protection order or a peace bond which are protective and addressing safety needs would overrule a court order, such as a guardianship or parenting time order. For example access orders relating to parenting time should be suspended until the protection order ends or is changed to address the conflict.

ADDITIONAL RESOURCES

Determining where and how to commence a protection order matter is discussed in detail in the LSS and Ministry of Justice booklet provided here.

http://legalaid.bc.ca/resources/pdfs/pubs/For-Your-Protection-eng.pdf

RESPONDING TO SUBPOENAS AND RECORD REQUESTS

Q: How should frontline workers respond to subpoenas and requests to testify and produce records?

Any information that a frontline worker is witness to, records or collects, including drawings, and journals kept for safe-keeping may be subpoenaed as part of a legal proceeding. Although you are considered a third party to this legal matter, you can still be asked to appear as a witness or to produce records. These requests are part of the discovery process allowed in court cases. As part of that court process, you can ask that the request be set aside or cancelled or limited and it is important for you and your program to understand your legal rights.

A subpoena is a court order that requires you to come to court to testify as a witness and a "subpoena duces tecum" (Latin: duces tecum meaning bring with you) is a court order that summons you to court to bring records in your possession or under your control. If you receive a subpoena it is because a party to a court case believes you have material evidence in the pending court matter. Failure to comply with the subpoena may result in a warrant being issued for your arrest or contempt charges for not complying. If you have reasons not to be a witness or to produce documents you and your agency can file a motion with the court to set aside or limit the subpoena. Legal representation is very important for you, you program and your client in these circumstances.

The court process varies according to the nature of the request and the underlying court case. Disclosure of third party records in specific sexual violence prosecutions are covered by Criminal Code provisions and disclosure of records in other criminal and civil cases are governed by court decisions, statutes and trial practice rules.

Below is a discussion of a general response for all matters as well as a discussion of the specific process for sexual assault cases, other criminal cases, family court and civil cases and other record releases.

GENERAL RESPONSE

The Program should proceed on a case-by-case basis for every subpoena.
In general, subpoenas are served by personal service and often by a professional process server. When the subpoena is served, the recipient should accept service but be careful not to reveal any confidential information in response to any questions asked. Next, the recipient should read the paperwork carefully to determine what is being asked and by whom and when. The name of the lawyer or party who is summoning you to court is on the paperwork.

In civil cases, the paperwork will show the names of both sides; the plaintiff is making the claim and the defendant is responding or defending. In criminal cases, the paperwork will list Regina (The Queen) which represents the state and the name of the accused or defendant. In criminal cases, the Crown Counsel prosecutes on behalf of the government and the defense counsel represents the accused person. If the subpoena is in a criminal case, the Crown Counsel represents the government and does not represent the client or the Program.

After you have reviewed the paperwork, the recipient should advise their supervisor and/or Executive Director at the program. The program could consider sending a letter to the summoning party acknowledging receipt of the subpoena and advising them of their plan to consult with a lawyer. A sample letter is attached below.

Given the overlapping and complex legal issues that frontline workers often address, a program should develop an on-going relationship with a lawyer who may be willing to represent you and the program on a volunteer or pro bono basis (Shortened version of "pro bono publica" Latin: for the public good, usually refers to free services) or perhaps on a sliding fee scale. The lawyer can advise the program of their obligations under the law and their potential liabilities and represent them in court matters.[4]

The Program should also tell their client about the subpoena and recommend to the client that she should get independent legal advice. Your client has different legal interests than you and your program and she needs her own lawyer. For clients, legal representation may be available through legal services, volunteer lawyers and in certain criminal matters the government will fund legal representation for survivors faced with

[4] The BCSTH Legal Toolkit at "Accessible BC Legal Resource" discusses free legal options including Access Pro Bono's Solicitor's Program that provides free legal advice to non-profits.

disclosure requests. Your client has a privacy interest in the records and testimony and she can raise the protection of that interest in a court hearing to set aside the request. [5]

Once legal counsel is involved, the lawyer(s) will communicate with the other lawyers and the requesting party as to whether you and your program will comply or file a motion to set aside the subpoena.

If your lawyer files a motion to set aside, the matter will be scheduled for a hearing. Grounds to set aside the request could include:

- Procedural defects with the paperwork;
- The program does not have any material evidence to provide; and/or
- The requested information is privileged which means it is protected from disclosure.

The identified party in the subpoena must appear in court on the date set for the motion hearing to set it aside. If records are requested, you should bring the original documents and a copy of the documents to the court with you. You could leave a copy of the documents at your program as well. **You do not have to release the records until and only if the judge orders you to.**

At the hearing, the judge may review the records in a closed hearing to aid the decision and in certain criminal matters the judge is required to review the records in a closed hearing. If the judge determines that records need to be released, you can request through your lawyer that conditions be attached to the release.

Limiting conditions such as the following can be requested:

- Only relevant portions of the records are released;
- A limited number of copies are made of the documents;
- Documents will only be viewed at court;
- The defendant and his lawyer cannot disclose the information further without court approval; and

[5] The BCSTH Legal Toolkit Information Sheet, "Overview of Courts and BC Legal Resources" provides a list of options for legal counsel for clients and programs.

- Identifying personal information (addresses, phone numbers, dates of birth, places of employment, etc.) is blacked out or redacted.

SEXUAL VIOLENCE CRIMES

A 1995 Canadian Supreme Court case, *R v. O'Connor*, established that the medical and counselling records of a complainant in a sexual assault case in the custody of a third party can be disclosed to the defense by the judge if the records meet an initial relevance standard and the defendant's right to a full answer and defence outweighs an expectation of privacy by the victim. [6] In 1997, following this case, Bill C-46 ("The Rape Shield law") was enacted which added sections to the Criminal Code that covered the production of records in sexual offenses. A subsequent case challenged the constitutionality of the Rape Shield Law and in 1999 the Canadian Supreme Court found the Rape Shield provisions constitutional as they allowed the judge to have sufficient discretion to preserve the complainant's right to privacy and equality while protecting the accused's right to a fair trial and full defence. [7]

The Criminal Code, Sections 278.1 to 278.91, provide the current procedure for the disclosure of records in sexual offence matters. The Code provides a very broad definition of record that includes any form of record that contains personal information for which there is a reasonable expectation of privacy and excludes records made in the course of an investigation.[8]

The Code requires that the accused file an application with the presiding trial judge that sets out the particulars of the request and demonstrates sufficient grounds for the information. The application and subpoena must be served on Crown, the person who has control of the records, the complainant, and any other person that the record relates to. The mere existence of the record is not sufficient as it must be relevant to an issue or to the competence of a witness. The Judge holds the hearing "in camera" (Latin: "in a chamber") to determine if the request meets the statutory criteria. If the judge orders production, the judge may impose conditions on the disclosure.

[6] *R. v. O'Connor* (1995) 4 S.C.R. 411
[7] *R. V. Mills* (1999) 3 S.C.R. 668,
[8] Section 278.1

ALL OTHER CRIMES

In other criminal cases, the steps in *R v. O'Connor* will control requests for release of third party records. The trial judge will consider whether:

1. The applicant establishes that there is a reasonable possibility that the information is likely to be relevant to an issue in the trial or to the competence of a witness; and
2. After reviewing the records, the competing interest of the right of an accused to a fair trial outweighs the complainant's right to privacy.

The *O'Connor* factors that the judge considers include but are not limited to:

1. The extent to which the record is necessary for a full defence;
2. The probative value of the record;
3. The nature and extent of the reasonable expectation of privacy in the record;
4. Whether production is based on a discriminatory belief or bias; and
5. The prejudice to the complainant's dignity, privacy or security.

FAMILY COURT OR CIVIL MATTERS

In a Family Court or Civil Court matter, frontline workers and programs can be served with motions for the production of client records as part of the pre-trial discovery process and front line workers also can be subpoenaed to be witnesses and to produce client records at a trial or hearing.

These motions or subpoenas can be challenged if the evidence is not relevant and/or is privileged. The court rules provide that relevant information must "prove or disprove a material fact". The court cases allow for a case by case argument regarding privilege and the judge will consider if:

1. The communication was given in confidence;
2. The confidentiality is essential to the relationship; and
3. The confidential relationship fosters a public good.

If these 3 items are met, the judge must consider whether the privacy interest in protecting the disclosure outweighs the interest in finding the truth and disposing of the civil case correctly.

BC courts have noted that documents produced in a criminal case will not always be produced in a civil case. There have been civil cases where judges have refused to disclose counselling records from Transition House programs on the basis that the records were not relevant and were privileged under these standards. This related to a civil personal injury case involving an auto accident where the plaintiff had received services and counselling at a program. [9]

If after a hearing on the Motion to set aside the request, the Judge does order the frontline worker to testify or orders a partial or complete production of records, the program or client can request limitations in the scope of the testimony and limitations to the disclosure of the records similar to the conditions listed under the Criminal Code sections above.

RELEASE WHEN THE CLIENT REQUESTS

Your client may ask you to release records to a third party such as her lawyer for a court case. You need to get express written consent from your client to share the records.

A release form should:

1. Set out the nature of the information to be shared and the recipients of the information, and the purpose for which it is being shared;
2. Indicate whether it applies only to information that has already been gathered, or also applies to information that may be obtained in the future;
3. Be signed by the client, witnessed, dated and time-limited; and
4. Include a statement that the client may withdraw her consent at any time.

RECORDS IN CROWN COUNSEL'S POSSESSION

Regarding records that are already in the Crown Counsel's possession because of the criminal investigation, the Crown has a legal duty to disclose all relevant information to

[9] *R.C.L. v. S.C.F.* 2011 BCSC 854

the accused subject to their discretion to refuse to disclose privileged, irrelevant information and to protect the identity of informers. Relevance, in this context, is defined as a reasonable possibility that the information is useful to the accused person in fully answering the charges and making a full defence. It includes evidence which the Crown does not intend to introduce and statements from persons who will not be witnesses along with notes and inculpatory and exculpatory evidence. If the Crown chooses to withhold records in their possession their decision is subject to review by the trial judge.

For your information, here are the following court subpoena forms:

- Provincial Criminal Court:
  http://www.ag.gov.bc.ca/courts/forms/pcr800/pcr908.pdf

- Provincial Family Court:
  http://www.ag.gov.bc.ca/courts/forms/pfa/pfa058a.pdf

- Supreme Court of BC - Family:
  http://www.ag.gov.bc.ca/courts/forms/sup_family/F23.pdf

- Supreme Court of BC – Civil:
  http://www.ag.gov.bc.ca/courts/forms/sup_civil/25.pdf

SAMPLE RESPONSE LETTER

Date

Name /Address of Person Requesting Records/Testimony

RE: _____ v. _____ (Parties listed on Paperwork)

Dear _____:

We are in receipt of the _____ in the matter of _____ v. _____ which was served on us by _____ on _____ (date) requiring appearance at the following _____ (place, date and time).

We have read the served paperwork and understand our obligations to comply.

We are discussing the paperwork with our legal counsel.

We will be in contact with you before the court date.

Thank you for your cooperation.

Sincerely,

Executive Director

Organization/ Program Name

4. PROGRAM PARTICIPANT'S RECORDS

NOTE TAKING AND CLIENT RECORDS

Q: What should frontline workers document in their client record?

Frontline workers are faced daily with the need to document interactions with their clients in a clear fact based way knowing that anything that is recorded or collected may be subpoenaed or requested in a criminal, civil or family court case.[10] Frontline workers should document in their records information that is necessary to provide services to the client while being mindful of the woman's and child's safety and what notes could support and undermine safety. The records and notes should contain specific information needed for the length of time required for the Program to be effective in its service delivery. As discussed in the BCSTH Legal Toolkit information sheet on "Records Retention and Destruction", the general rule (with some exceptions discussed in that section) is that adult records should be kept for a minimum of 7 years and records of a child client should be kept for 7 years after they reach age 19. Depending on the nature of the individual program, different programs will have different policies to reflect their offered services and this information sheet speaks generally and reflects those differences when necessary.

Before asking or recording information about a woman you could ask yourself:

1. What is the purpose of collecting or recording the information? Will the recorded information improve services for her? Is the information necessary to determine and deliver the appropriate services?
2. Is the recorded information your subjective perspective of the woman's or child's situation or is it fact based?
3. What will you do with that information once collected?
4. Could the collection of the information be harmful to the woman and her children in terms of gaining access to services or in a legal setting?
5. Could the information be harmful if subpoenaed and disclosed to third parties?

[10] The BCSTH Legal Toolkit addresses this in the "Responding to Subpoenas and Records Requests" information sheet.

Is It Best Practice to Collect Minimal Information?

Programs should consider that the more client data that is collected, the greater the potential confidentiality risks to victims and the more steps your agency will need to take to protect that larger amount of data. When creating policies that address how long to keep agency records, it is important to first examine what data is being collected and its purpose. If a primary goal of your services is to support survivor safety and confidentiality, then your program should make sure that you never collect or retain data that could inadvertently harm or increase risks for a survivor if disclosed to third parties.

A practice to consider for data collection is to collect the minimum amount of information needed by your agency to provide services. It is best to stick to the facts; detailed case notes or narratives describing full conversations with a survivor are often unnecessary. Programs should refrain from including subjective assessments of the victim by agency staff. Additionally, a survivor might feel comfortable telling an individual staff person about information not related to the present violence she is experiencing, such as being a child abuse survivor or having a health disability; yet it might not be relevant or helpful to the survivor to document those sorts of details in your intake form or record. As part of informed consent, it is smart practice to be transparent and to ask the program participant what information s/he does or does not want included in intake or other program forms.

CLIENT RECORD

Client records can include:

- Intake forms and demographic data
- Informed consent form
- Release of Information forms (including releases to and from third parties)
- Assessments completed by the program

- Service plans
- Case Notes
- Third party reports
- Correspondence regarding client
- Court and legal documents regarding client
- Referrals to other services documentation
- Mandatory reporting referrals
- Safety Plans
- Closing Report

Information received from sources other than the program participant, such as third party reports or correspondence regarding a client, may sometimes be included in the file and as such would be discoverable in court proceedings. Keep in mind that summarizing documents obtained from other sources would not an appropriate practice. The original document, if relevant, should be maintained in the program participant's file until the end of service delivery. Copies of protection orders, peace bonds, as well as legal agreements and orders, should be retained in the file. However, program participant files should *not* contain legal documents or statements containing legal conclusions that potentially may be used against her, except those conclusions made by a court of law or by an attorney for the program participant.

When a program participant asks the agency to hold personal papers (e.g., diary or journal, birth certificates, passports, immigration documents, school enrollment cards or car title) for safekeeping, these documents if held in the program's records could be subject to disclosure under a subpoena or record request. Since they would potentially be subject to discovery, another option would be for a program participant to give them to a local trusted family member or friend to safeguard or to place the items in a safe deposit box.

If you have clinical students or interns working in the program, if any student or intern notes are released to college instructors, all identifying material must be removed from these notes, including the names of staff, volunteers, program participants and their children and other students.

INTAKE FORMS

Intake information includes:

- Basic demographic information that is required for the program's needs
- Contact information including emergency contact information and how to be contacted
- Information about cultural, medical or other specific needs that will impact services provided
- Information about possible referrals and services for the client.

Intake forms should collect only information that is necessary to determine the appropriate service and to deliver the specific service to the client. A frontline worker should be cautious recording information about a client's mental wellness, substance abuse or potential criminal behavior as that information if disclosed to third parties may be detrimental to the woman's safety and well-being.

Some programs use a generic initial intake form and then a secondary intake form for more detailed necessary information related to specific services. The generic form requests basic information to determine appropriate services. Sample generic intake forms for different BCSTH programs are below.

Once a client is referred for services, the secondary intake form would request information specific to that service. BCSTH's Reducing Barriers Project provides guidance for the secondary intake process and can be found at:

http://www.bcsth.ca/content/reducing-barriers-support-women-who-experience-violence

INFORMED CONSENT

BCSTH programs are voluntary so clients must consent to participate in these services and that consent must be informed. To be informed consent, the client must be fully informed regarding what the client is consenting to and have the legal capacity to consent. [11] As part of the intake process, front line workers should document that you have informed consent from the client which assures:

- Being informed of information and services that enable her to explore her options;
- The client and her children being central to planning and decision making by being informed;
- Being informed of program policies that have a direct impact on her such as:
    - How you intend to use and disclose any collected information and obtain the woman's written consent to use and disclose the information this way;
    - The legal exceptions to confidentiality; and
    - The program's privacy policy and records management policy.[12]

A sample informed consent form is below.

Sample authorization to release information forms are below.

SERVICE PLANS

Service or case plans outline the services provided and the manner to deliver that service and the timeframe. Some practitioners have clients sign their service plans. Service plans can be a chart or checklist and a sample service plan is below.
In determining the service plan, if information is needed from a third party the program participant needs to authorize release of that information to you. A sample authorization to release information is below but note that some third parties require use of their entity's release form. The best way to access these records should be discussed with the program participant.

[11] The BCSTH Legal Toolkit discusses this at the "Informed consent for Minors and CWWA Counselling" information sheet.
[12] The BCSTH Legal Toolkit discusses privacy policies in the "Records Retention and Destruction" information sheet and records in the "Records Management" information sheet.

WORKING CASE NOTES

On-going case notes should:

- Be kept up-to-date and recorded as soon as possible after every session and initialed and dated by the author
- Reflect notes about the session not historical or legal facts
- Record information needed to provide service and what is needed for colleagues to provide service
- Be brief and note major topics and themes and keep details to a minimum.
- Avoid documenting verbatim accounts
- Document methodologies used
- Be objective and not include subjective comments
- Be fact based and avoid speculation
- Avoid information about people other than the client except when necessary
- Be in a common format
- Be legible
- Indicate if information is from a third party
- Be kept in ink with corrections made by crossing out deleted material so that it can still be read
- If applicable, reflect that the client has read the file and whether any information has been recorded or changed at their request

CLOSING REPORT

A closing report is kept in the case file and provides the start and end date of services and a summary of services and referrals. The report should reflect that a departure interview was offered the program participant and she was given the opportunity to evaluate the program. The report should be signed by the staff who worked with the client and the program manager or supervisor. A sample closing report is below.

SAMPLE FORMS

All the sample forms below are template forms that you can amend for your own program's needs. They are simply options for you and your Program to consider.

BASIC CONTACT INFORMATION FOR INTAKE PURPOSES (GENERIC)

Name: _____ Date: _____
Address: _____
Preferred Language: _____
Interpreter needed: ____Yes ____No
If we need to contact you, what is the safest number to reach you?
Telephone: _____day _____ evening

To ensure your privacy, program staff will not initiate conversations or contact you outside of the program. 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 and your partner share guardianship of your child/ren ? ___Yes ___No
What if any, agreements or court orders do you have relating to your child/ren?

_____

_____

Can you provide copies of any agreements or court orders regarding your child/ren?
___Yes ___No

MEDICAL ALERT (TRANSITION HOUSES)

Medical or special needs:

___ access issues ___ medications
___ allergies ___ other
___ dietary concerns

Health Care Provider's Name(s): _____
Tel._____
Emergency contact:
Name_____ Relationship _____
Tel._____ Address_____

SPECIAL NEEDS

Are legal proceedings underway or expected? ____ Yes ____No
Can you provide any copies of any court orders or agreements? ____ Yes ____ No

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? _____
_____
_____

POSSIBLE SERVICES AND REFERRALS CHECKLIST

Housing ____ Medical _____
Support _____ Counseling _____
Safety Planning _____ Employment _____
Legal Information _____ Transportation ____
Educational Information _____
Other _____

SAMPLE ADOLESCENT INTAKE FORM

Appendix 2. Sample Forms

Sample Intake Form

Adolescent Intake Form

Note: Inform the youth that information provided is confidential unless they disclose harm to self or others.

Date	Counsellor

Name	School
Age	Grade
Date of Birth	Sex

Getting to know you

What do you enjoy doing at school?

_____

_____

Do you have any siblings? (names, age, a few words that describe them)

_____

_____

What do you like to do for fun?

_____

_____

Friends and community

Do you have a friend(s) whom you are close to?

_____

_____

Do you belong to any groups/clubs/teams?

_____

_____

What's going on

Why do you think you are here?

_____

_____

How would you describe your feelings about being here?

_____

_____

How have you been eating/sleeping?

_____

_____

What does the word "abuse" mean to you?

_____

_____

Parents/guardians

How many parents do you have? What are their names?

_____

_____

For each of your parents, tell us briefly how you would describe the person to someone who doesn't know them. Then tell us a little about your relationship with each one.

_____

_____

_____

_____

_____

_____

_____

_____

SAMPLE INFORMED CONSENT FORM

I consent to receive the following service(s) I have listed below which are provided by_____ (Name of Program).

_____
_____
_____
_____
_____

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 _____ (Name of Program) to collect personal information 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 _____ (Name of Program) may occur only with my written and signed consent subject to certain legal exceptions.

These legal exceptions are:

- If Program 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 Program 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.

- If Program staff are required by court order to disclose specific records or to attend court and testify.

I understand that my records will be kept for (Insert Program retention period) and that they will be destroyed after that time.

I understand that my records will be kept in a database that is not connected to the Internet or in an on-line database that is encrypted and password protected. (If these options apply to your program revise as needed).

I understand that Information about (Name of Program)'s privacy and confidentiality policy can be obtained by contacting _____ (Program Contact) at _____ (Program Contact phone number).

Date_____

I understand that I can revoke this consent at any time. This agreement is good until _____ (Insert end date).

_____
Client Name

_____
Client Signature

_____
Program Staff Name

_____
Program Staff signature

REVOCATION OF CONSENT

Informed Consent revoked on this date:

_____
Signature of Participant:

_____
Signature of Staff:

_____

SAMPLE AUTHORIZATION TO RELEASE INFORMATION

We _____ (Name of program) will not release any personal information about you without your permission unless a legal exception exists as explained on the Program's informed consent form.

If you sign an authorization to release personal information, you can revoke this authorization at a later date.

I _____ (Printed Name of Program participant), authorize this program to release the following personal information:

_____
_____
_____
_____

To: _____ (Name of organization and person)
_____ (Address, phone, fax, email)

For the following purposes:

_____
_____
_____
_____

I understand that I can revoke my authorization to release personal information at any time. This authorization is good until _____ (Expiration date).

_____ _____
Participant Signature Date

_____ _____
Staff Signature Date

REVOCATION OF AUTHORIZATION

Authorization Release revoked on this date:

_____
Signature of Participant:

_____
Signature of Staff:

_____

Sample Release of Information Form

Client Consent to Release Information

I, _____ *[name]* consent to _____ *[agency]* sharing information that concerns my family and myself as described below.

Name of originating program: _____

Address of program: _____

Name of individual with whom information may be shared: _____

_____

Organization: _____

Address of organization: _____

Purpose of information sharing: _____

_____

_____

Specific information that may be shared (list any specific documents):

_____

_____

_____

Specific exceptions (information that may not be shared):

_____

_____

_____

This consent is effective from _____ to _____.
I understand that I may withdraw my consent at any time, after which no further information will be shared.

_____ _____
Signature of client/guardian Date

_____ _____
Signature of CWWA counsellor Date

SAMPLE AUTHORIZATION TO THIRD PARTIES TO RELEASE INFORMATION

I _____ (Insert printed name of Program participant), authorize this entity _____ (Name of entity and person) at _____ (Address, phone, fax, email) to release the following personal information:

_____
_____
_____
_____
_____
_____

To: _____ (Insert name of organization and person) at _____ (Insert address, phone, fax, email)

For the following purposes:

_____
_____
_____
_____

I understand that I can revoke my authorization to release personal information at any time. This authorization is good until _____ (Expiration date).

Participant Signature _____ Date _____

Staff Signature _____ Date _____

FOR REVOCATION OF AUTHORIZATION

Authorization Release revoked on this date:

_____

Signature of Participant:

_____

Signature of Staff:

_____

SAMPLE SERVICE PLAN

Name: _____
Date: _____
Area of Need: _____

Current Status	Goal	Action Steps	Date Goal Achieved

Area of Need: _____

Current Status	Goal	Action Steps	Date Goal Achieved

Area of Need: _____

Current Status	Goal	Action Steps	Date Goal Achieved

Signature of Participant _____ Date _____
Signature of Staff _____ Date _____

SAMPLE CLOSING REPORT

Name:	Date:
Date entered Program:	Date exited Program:
Departure Interview held? ___ Yes ___ No	Summary of Departure interview:
SUMMARY	
Follow-Up? __ Yes ___ No	Date of Follow-Up and Outcome:
Record Summary Form Attached? __ Yes ___ No	
Other:	

_____ Staff Name
_____ Staff Signature
_____ Program Manager Name
_____ Program Manager Signature

5. RECORDS MANAGEMENT

RECORD KEEPING

Q: Why and how should a BCSTH Program keep records?

Program records are necessary to comply with a variety of administrative obligations and to serve clients. Clarity in record keeping policies and procedures would benefit the program and its services. Record keeping for programs is a necessity for program management, statistical and funding obligations and accountability. Program participant records that are necessary to provide services to these participants can also raise confidentiality and privacy issues. By adopting policies and procedures regarding record keeping and conveying them clearly, to the participants, the program would be able to administer their program effectively and provide a responsive service to their clients.

PROGRAM PROCEDURES

1. All staff, contractors, volunteers, student interns and board members should sign an agreement to maintain the confidentiality of program participant communications, records and written documentation (including call logs, emails and sticky notes). A sample confidentiality form is below.
2. All program participants, whether they are receiving services in person or on the telephone, should be informed of the agency's record-keeping practices and the legal exceptions to confidentiality. These legal exceptions are:

    - If program 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 program staff have reason to believe that the client is likely to cause serious physical harm to herself or another they are obligated to inform the appropriate authorities.
    - If program staff are required by court order to disclose specific records or to attend court and testify.
    - If the client expressly consents to the release of records.

3. The agency should inform the program participant of the retention and destruction procedures regarding program files.[13]
4. All contents of program participant files and other written documentation should be limited to information that is required for statistical and funding purposes and to document the need for services.
5. Emails and other electronic records stored on agency computers should be treated in the same manner as paper records for the purposes of confidentiality and record keeping.
6. Information identifying program participants should not be disclosed in email messages either between program staff or to external parties, and appropriate steps should be taken to ensure the security of the program's computer network.
7. All participant records are confidential, even when shared by the program participant in the presence of an advocate and any third parties who are working on behalf of the program participant.
8. Requests by any third party for information or records, including the program participant's status as a client, should not be honored without express written consent from the program participant, with the exception of the legal exceptions identified above. Third parties would include, but are not limited to, the program participant's attorney, representatives of the criminal justice system, mental health or medical providers, social service workers, housing or child protective services, coordinated community response committees, interagency or integrated case assessment teams, or friends and family.
9. If the program is required to disclose a program participant's personal information or records under the aforementioned legal exceptions, the program should make reasonable efforts to notify the program participant that this has occurred.
10. If a program participant's personally identifying information has to be disclosed because of a legal exception to confidentiality, the Program will take all necessary steps to protect the individual's safety and privacy.
11. The program should provide the record keeping policy and supporting documents (such as written releases) in appropriate languages (basic literacy

[13] The BCSTH Legal Toolkit has an Information sheet on "Records Retention and Destruction".

level as well as language translations) and accessible formats (such as tape cassette or large print) to the program participant.

12. All program participants' files should be routinely reviewed and unnecessary documents purged from the files, including documents stored electronically. Unnecessary paper documents that are removed should be shredded.
13. The program should develop a process for responding to subpoenas for records, other work product or communications between the program participant and staff/volunteers.[14]
14. The program should establish a relationship with an attorney who understands the program's purpose, legal obligations and potential liability under federal and provincial confidentiality laws.
15. The program should provide periodic training for staff, contractors, volunteers and board members regarding the legal obligations for records held by the program and the importance of maintaining the confidentiality of program participants' records.
16. The program should monitor the implementation of the record keeping policy and workplace practices.
17. The Executive Director or a delegate should be the contact person regarding record keeping obligations.

INFORMING THE PROGRAM PARTICIPANT

All program participants, whether they are receiving services in person or on the telephone, should be informed of the program's record keeping practices and the legal exceptions to confidentiality.

[14] The BCSTH Legal Toolkit has an Information Sheet on "Responding to Subpoenas and Record Requests".

On the Phone

The program staff should:

1. Explain the program's record keeping policy;
2. Not document the program participant's full name in the call log;
3. Explain to the program participant that their full name will not be documented in the crisis log;
4. Explain that records are maintained for statistical and informational purposes.

In Person

The program staff should:

1. Explain that contact between the advocate and the client is documented for statistical and informational purposes.
2. Explain what information will be kept in the program participant file.
3. Explain the program's record keeping policy and procedures and the legal exceptions to confidentiality.
4. Explain that files are kept in a locked place with limited access by staff.
5. Explain who has access to the program participant file.
6. Explain that program participants have the right to review the contents of their file and request the correction or removal of inaccurate, irrelevant, out-dated or incomplete information.
7. Explain that information received from sources other than the client herself may be included in the client's file.
8. Explain to the program participant that if she needs the agency to hold papers for safekeeping, those papers will be part of her file and may be subject to disclosure. Program staff can explore alternative safekeeping places such as trusted friends or family or a safe deposit box.
9. Ask the program participant to sign an informed consent form that states that she has been informed of the agency recording keeping policy and procedures,

and place the signed form in the program participant's file. See, Sample Informed consent form attached.

PROGRAM PARTICIPANT FILES

The content of program participant files and other written documentation should be limited to information that is required for statistical and funding purposes and documenting the need for and delivery of services.[15]

Shelter logs or telephone logs should use only the first name or initials of clients whenever reasonable. These logs must be factual only and must not include subjective, interpretive or evaluative remarks about the program participant.

In some programs, files related to the program participant may be held in more than one location or be tied to different kinds of advocacy services. Agencies should develop procedures that allow for the sharing of limited, relevant written information between staff regarding the program participant. Essential communications about individual clients that cannot effectively be made orally to other workers in the program should be made in memo form and be factual and relate to the delivery of services. All entries in a program participant file must be legible and must use language familiar to program participants.

For example, Transition House and CWWA counsellors should maintain separate files on the same program participant. Separate programs within the same organizations often have separate funders and mandates and should use a request for information memo between the programs along with program participant authorizations to release information to access information that is maintained by the separate program. For example, upon receipt of the request for information memo along with a release, the Transition House worker could send a memo to the CWWA provider which briefly and factually summarizes the contact with the participant. This memo should be dated and signed by the Transition House provider and inserted into the CWWA file.

[15] The BCSTH Legal Toolkit has an Information sheet that discusses "Note Taking and Client Records".

ACCESS TO PROGRAM PARTICIPANT FILES

Staff Access

1. Access to client records should be permissible only to those people who are:
    - Present at the time the information is shared and working to provide services to the program participant; or
    - Working for the program and also working on behalf of the program participant, such as the executive director, staff, student interns and volunteers.
2. Access to client records files should be controlled and monitored by executive director or their delegate when needed. Access to client records should be on a need to know basis and the executive director should establish clear protocols within the program as to who can access the records and for what purpose.

Program Participant Access

1. Requests by program participants to review their files must be honoured except where precluded by law (for example, in a child protection matter). The file should be reviewed in the presence of program staff. There may be some data in the file that is authored by third parties that is being stored temporarily in order to better serve the client.
2. Requests by any third party, including but not limited to a program participant's attorney, should not be honored without the program participant's informed written consent.
3. The program participant, or an authorized third party, may make notes about the contents of her file and make a written request for a copy of those portions of the file that are not the work product of the agency. That request would be kept in the file to document the request and release of any records should be documented in the file summary form.[16]
4. The program participant should be informed that a copy of her file released to any third party may no longer be covered by confidentiality and privacy laws and

[16] A File Summary Template is in the "Records Retention and Destruction" Information Sheet of the BCSTH Legal Toolkit.

the information it contains could be used against her in proceedings. The program should refer the participant to available legal counsel to provide advice on the status of this information.

5. The program participant may request the correction or removal of inaccurate, irrelevant, out of date or incomplete information from her file. Any document or notation required by a funding or legal obligation must remain in the file. The file may be corrected; but, if the program disputes the accuracy of a proposed correction, the dispute should be noted and the file would remain unchanged. In response, the program participant may submit to her file information or a written statement supporting her proposed correction. If information is corrected, the program must send the corrected information to any organization that received the previous information.
6. If documents or materials are held by the program for safe-keeping they are discoverable if kept in the program participant's file as noted above and must be returned to her upon her request.
7. Program participant files may not be removed from the program except with written permission of the executive director or her delegate.

Access by Board Members

1. All members of the program's board of directors are required to sign an agreement to maintain confidentiality and are informed of the program's privacy obligations.
2. Board members do not have access to program participant files or to information that would identify a client, except with authorization of the program participant or the executive director. Generally, this authorization is given under the following circumstances: in specific administrative situations; for handling a subpoena or records request of a program participant's file; or if there is litigation against the agency related to the program participant.

Access by General Public

1. The general public is not entitled to access the program's records. Names and other case information that could identify a program participant must never be

used in meetings, trainings or public speaking. Disclosure should be made only with the express written consent of the program participant.

2. Program records that are subpoenaed or subject to a records request should not be surrendered before consulting with a lawyer. Upon receipt of a subpoena, the program could consider sending a letter to the requesting party acknowledging receipt and advising them of their intention to consult with legal counsel.[17]

MAINTENANCE AND DESTRUCTION OF PROGRAM PARTICIPANT FILES

1. Program participant files should be kept in locked file cabinets or in a locked area, which is secure at all times. Keys to the file cabinets or locked area should be in a secure and restricted location.
2. All files will be maintained and destroyed as contractually and legally required.[18]
3. The program participants should sign a statement that can be part of their informed consent which acknowledges that she has been notified of the retention and destruction procedures regarding agency files.
4. The executive director or her delegate will supervise the destruction of program participant files and program logs. Under no circumstances should a file, or any part thereof, be destroyed to avoid a subpoena.

ON-LINE DATABASES

Programs may be considering using on-line databases to store program participant files instead of paper files or in addition to paper files. If your program is considering adopting a database or currently has a database some cautionary steps should be adopted as part of an on-line collection of client information.

1. The program should have full ownership of the database and must ensure that it cannot be accessed by anyone else.

[17] The BCSTH Legal Toolkit information sheet, "Responding to a Subpoenas and Record Requests" includes a sample receipt letter.
[18] The BCSTH Toolkit has an Information Sheet on the "Records Retention and Destruction".

2. It is also important for programs to think through all data collection and maintenance processes. Databases should be maintained by and within individual programs. It is important to safeguard computers to protect survivors' personally identifiable information. For example, some programs keep sensitive client-level information on computers that are not connected to the Internet. Programs that need to use cloud-based databases should have the data encrypted (locked) and only the program's staff holds the encryption key.
3. A recommended practice is to always get consent by a survivor, or at least provide notice, for all the ways their personal information may be used. Survivors should be fully informed of the program's data collection processes and of the risks and the uses of databases and the program should consider including this information in their informed consent form.
4. Programs should do an annual assessment of their on-line forms and database to ensure that they are only collecting the minimal information required to provide the requested services. This assists the work of the front-line workers and respects the privacy of survivors.
5. Programs should recognize that databases are often not time limited. Databases offer multiple opportunities for exporting data, creating many backup copies in multiple locations, and merging or re-bundling data. Even if a survivor's information is later deleted, there is a risk that a backup of the database has been created at some point and the information will be stored for as long as that backup is retained by the agency administering the databases. The potential permanency of the database information may conflict with a time-limited authorization to access information from a program participant.
6. Programs should establish clear operating policies that address these concerns and support can be found at: http://techsafety.org/.

SAMPLE FORMS

All the sample forms below are for you to consider and amend to meet your Program's needs. They are offered as options for you and your program to consider.

SAMPLE CONFIDENTIALITY FORM

It is the policy of [Name of Program] that board members and employees of [Name of Program] will not disclose confidential information belonging to, or obtained through their affiliation with [Name of Program] to any person, including their relatives, friends, and business and professional associates, unless [Name of Program] has authorized disclosure. This policy is not intended to prevent disclosure where disclosure is required by law.

Board members, volunteers and employees are cautioned to demonstrate professionalism and care to avoid unauthorized or inadvertent disclosures of confidential information and should, for example, refrain from leaving confidential information contained in documents or on computer screens in plain view.

Upon separation of employment and at the end of a board member's term, he or she shall return, all documents, papers, and other materials, that may contain confidential information.

Failure to adhere to this policy will result in discipline, up to and including separation of employment or service with [Name of Program].

I have read [Name of Program]'s policy on confidentiality and the Statement of Confidentiality presented above. I agree to abide by the requirements of the policy and inform my supervisor immediately if I believe any violation (unintentional or otherwise) of the policy has occurred. I understand that violation of this policy will lead to disciplinary action, up to and including termination of my service with [Name of Program].

Signature _____ Name _____

Date_____

Program Role_____

SAMPLE INFORMED CONSENT FORM

I consent to receive the following service(s) I have listed below which are provided by _____ (Name of Program).

_____
_____
_____
_____

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 _____ (Name of Program) to collect personal information 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 _____ (Name of Program) may occur only with my written and signed consent subject to certain legal exceptions.

These legal exceptions are:

- If Program 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 Program 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.

- If Program staff are required by court order to disclose specific records or to attend court and testify.

I understand that my records will be kept for (Insert Program retention period) and that they will be destroyed after that time.

I understand that my records will be kept in a database that is not connected to the Internet or in an on-line database that is encrypted and password protected. (If these options apply to your program revise as needed).

I understand that Information about [Name of Program]'s privacy and confidentiality policy can be obtained by contacting _____ (Insert Program Contact) at _____ (Insert Program Contact phone number).

Date _____

I understand I can revoke this form any time. This agreement is good until _____ (Insert end date).

_____
Client name

_____
Client Signature

_____
Agency Staff Name

_____
Agency Staff signature

FOR REVOCATION OF AUTHORIZATION

Authorization Release revoked on this date:

_____
Signature of Participant:

_____
Signature of Staff:

_____

6. RECORDS RETENTION AND DESTRUCTION

RECORDS AND RETENTION

Q: How long should a BCSTH Program keep records and when and how should they disclose records and dispose of records that are no longer required to be maintained?

RECORDS

Program records consist of operational, administrative and program participant records that contain personal information. How long these records need to be retained depends on the legislation and contractual obligations that govern your program and your program's funding sources as well as the type of the record involved. A program should maintain records and information for an appropriate time and should provide secure and appropriate disposition for records that are no longer required. It should also provide a transparent public record of the program's recordkeeping process.

- Operational records relate to the operations and services of the program. Program participant records and files would be considered as operational records.

- Administrative records relate to the management of the program and would include corporate records, policies and procedures, legal documents, financial records, employee, personnel or human relations records, facilities and property records.

The term record is defined broadly to include all recorded information regardless of physical format so it includes books, documents, maps, drawings, photographs, video or audio tape, letters, vouchers, papers and any item on which information is stored or recorded whether graphic or electronic. Emails are records and need to be managed in the same manner as paper records.

- Personal information means information that can identify an individual directly such as a person's name, address, phone number, identifying numbers or employee personal information. It also includes information that could link the

information to the identified person such as physical descriptions, educational background or blood type. It does not include business contact information.

RETENTION

Regarding personal information that is contained in program participant files, some BC legislation which is discussed below states that the information must be kept for a minimum of one year but the same legislation does not identify the maximum time frame for record keeping. The legislation recommends that your organization review your current grant, financial, legal, regulatory, operational, audit or archival requirements to make a determination. Seven years has been identified as timeframe that may meet some of these requirements with exceptions as discussed below. Under this general rule, adult client records should be kept for a minimum of seven years while the records of a child client should be kept seven years after they reach age 19.

The seven year retention period is justified as consistent with BC's Document Disposal Act which governs ministries, branches and institutions of BC government as well as current practices in related fields along with the Council on Accreditation Standards' general rule, that organizations should maintain case records for at least seven years after termination of services unless otherwise mandated by law.[19]

At the end of the seven year period, critical information from the record could be transferred into a file summary form and/or database and kept indefinitely and then the program could destroy the balance of the record. A sample file summary form is below. In determining what to keep, your program could consider the following elements:

- Governing legislation and potential legal implications;
- Evidential value to demonstrate that certain steps were taken;
- Historical value to record how a policy or process has changed with time; and
- Financial records to document required financial transactions.

Legal implications that could be considered in this analysis include future criminal or civil actions that may be related to the program's services. In Canada, there is not a statute of limitations that prevents the prosecution of a serious indictable offense however summary offences (punishable by 6 months and/or $5000 fine) have a 6 month

[19] Council on Accreditation for Children and Family Services, 2001.

limitation period for prosecution along with a 3 year limitation period for treason. In civil cases, limitation periods do apply and under the 2012 Limitation Act, the basic limitation for many claims is 2 years from the date of discovery except for debts owed to the government which is 6 years and 10 years for the enforcement of civil judgments. The ultimate limitation period under the BC Limitation Act is 15 years from the act or omission except for some exempted civil claims such as actions that relate to sexual assault and arrears of child and spousal support which have no limitation period. Personal information contained in employee files is governed by special rules which are discussed below. In general, if the program using employee personal information makes a decision that directly affects an employee, the program must keep the information used for that decision for at least one year.

LAWS

As stated above, legislation and contractual obligations that govern your program and your program's funding sources as well as the type of the record involved should guide your records management. The laws that govern privacy and personal information in BC are discussed below for background information.

PIPA

BC's Personal Information Protection Act (PIPA) is an act about privacy in the private sector and covers private businesses, charities, non-profit associations and labour organizations.
http://www.bclaws.ca/Recon/document/ID/freeside/00_03063_01

PIPA governs how private sector organizations must handle the personal information of its employees and the public. PIPA balances an individual's right to privacy and an organization's need to collect, use or disclose personal information for reasonable purposes. PIPA applies to more than 350,000 private sector organizations in BC. PIPA uses the "reasonable person standard" in deciding whether an organization has met its statutory duty which means that a reasonable person would think the action is appropriate under the circumstances.

PIPA covers not for profit organizations such as BCSTH programs, along with unincorporated associations, trade unions and charities. There are exceptions to this general rule where BC's other privacy law, the Freedom of Information and Protection

of Privacy Act (FIPPA, discussed below), may apply to some BCSTH programs that are contracted to perform tasks for public bodies such as provincial government ministries. PIPA does not apply if FIPPA applies. For, example a government ministry may have disclosed personal information to a not for profit contractor carrying out work for that ministry but maintained control over that information under the contract terms. FIPPA would apply to information under the ministry's control. (Section 3(2) (d))

Whether or not your program is covered by FIPPA, rather than PIPA, will depend on the wording of your contract with your funders. If the wording of the contract suggests that your records are under your program's "custody or control", then the PIPA rules apply.

In general, the wording of the front line program contracts in the past have been interpreted as retaining "custody or control" of their records. This means these programs would be governed by PIPA. As contract wording can vary, the program should review the contract terms each fiscal year. In this review, the following factors could be considered: does your contract define custody or control; under the contract does your funder have the right to review service related records; under the contract does the funder have input as to use or disposition of records; and who created the records.

Whether PIPA or FIPPA applies to your program, they both require that personal information be kept for at least one year and unless otherwise required by law or contract as discussed above, your program should keep these records for a minimum of seven years. At the end of the seven year period, the program should transfer critical information from the record into a file closing or summary form or database and then shred the balance of the record. The program should file the closing or summary form and keep it indefinitely. Some programs may have the capacity to retain all records and they may choose to do so but the program should also develop a procedure and directory of stored files that allows for easy access to the stored files if needed.

COLLECTION OF RECORDS UNDER PIPA

If PIPA applies to your program, the organization may collect personal information only for reasonable purposes that fulfill the purposes disclosed and permitted by PIPA. A program needs consent from the program participant to collect information and must notify the individual of the purposes for collection.

In limited and specific circumstances, under PIPA, non-profits may collect personal

information without consent or from a source other than the individual when:

- The collection is in the interest of the individual and consent cannot be obtained in a timely way. Section 12(1)(a)
- The collection with consent would compromise the availability or accuracy of information and the collection is for an investigation or proceeding. Section (1) (c).
- The information was disclosed to the organization under PIPA Sections 18 through 22.[20]
- The information was disclosed to the program before the adoption of PIPA in January 1, 2004 (Section 3(2) (i)) and you are continuing to use the information for reasonable purposes to fulfill the original purpose of the collection. If the program wants to use the information for a new purpose they would need to obtain consent from the affected person.

PIPA has particular rules for employee personal information. An employee is a person who is employed by the organization or performs a service for the organization. Program volunteers also are considered as employees under PIPA.

The collection, use and disclosure of employee's personal information must be reasonable for the purpose of starting, managing or ending an employment relationship. Managing includes human resource responsibilities as to employment and does not include contractors or consultants. If the Program collects, uses or discloses employee personal information without consent, the Program must notify the employee. (Section 12(1)) PIPA specifies limited and specific circumstances where this may happen which are discussed below. If the Program uses an employee's personal information to make a decision that affects the employee the program must retain that information for at least 1 year after using it so that the employee has reasonable access to the information. (Section 35(1)) In other circumstances, the organization should destroy documents containing personal information once the original purpose for collecting the information is no longer served and there are no other legal, contractual or business reasons to maintain the records. (Section 35(2))

[20] Section 18 - consent not required; Section 19 - for employment purposes; Section 20 - facilitating sale of business and assets; Section 21 – Research and statistical purposes; Section 22 – archival and historical purposes)

FIPPA

BC Freedom of Information and Protection of Privacy Act (FIPPA) applies to public bodies and in relevant part applies to contracted service providers performing services for a public body.
http://www.bclaws.ca/Recon/document/ID/freeside/96165_01

FIPPA makes public bodies more open and accountable by providing the public with a legislated right of access to government records and protects an individual's right to personal privacy by prohibiting the unauthorized collection, use or disclosure of personal information by public bodies.

FIPPA covers all provincial government public bodies, including provincial government ministries, agencies, boards, commissions and Crown corporations such as BC Housing. FIPPA also covers what is referred to as local public bodies such as municipalities, universities, colleges and school boards and contracted service providers performing services for a public body.

Under FIPPA the wording of the funding contract when the records were created determines whether the act applies. If your agency runs more than one program, some records may be governed by PIPA and some by FIPPA. Each individual contract should be reviewed. When working under contract for a public body, programs should clarify which entity has control of the personal information and this should be stated clearly in the contract.

If you are uncertain how to proceed, you should contact your program manager at your funding entity to consult and establish a procedure that meets your contractual and legal obligations.

If your program has determined that your funding Ministry has custody and control of your records, then requests for access to those records would fall under FIPPA and the requests would be handled by the Ministry and their Privacy Officer. If you receive a request for access to records or for a correction, your program should inform your Ministry contract or program manager who will refer the matter to their Privacy Officer. Under FIPPA, there are similar statutory obligations as to collection, use, access and disclosure of personal information. Your program should work together with the Ministry to meet the contractual and legal obligations. For example, if you ran a program that is funded by BC Housing, which is a Crown Corporation and thus a public

body under FIPPA, and your contract provides that BC Housing maintains custody and control over relevant records and you receive a request for these records you would refer the matter to BC Housing's Privacy Officer.

BC Housing's Privacy Policy and the BC FIPPA on-line request For Access to Records Form can be reviewed for background information and the materials could be adapted for your program.

http://www.bchousing.org/privacy

http://www.bchousing.org/resources/Privacy_Policy/FOI_Request_Form.pdf

BC Housing is subject to The Document Disposal Act which governs the retention and destruction of records for a variety of ministries, branches and institutions of the Executive Government of British Columbia. For background information here is that Act.

http://www.bclaws.ca/Recon/document/ID/freeside/00_96099_01

Another example of this approach may arise if your program is or was once funded by the Ministry of Children and Family Development (MCFD) which is governed by FIPPA. Part 5 of the Child, Family and Community Service Act (CFCSA) details the application of FIPPA and the access and disclosure steps taken by the Ministry if a record is in the custody and control of MCFD. The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children. In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. CFCSA may apply to records you have created to serve clients, such as counselling records or other ongoing service records. The program should review your contract language and contact your MCFD program manager to establish a procedure that meets your contractual and legal obligations.

For background information, in the CFCSA, the FIPPA provisions are listed at Part 5.

http://www.bclaws.ca/Recon/document/ID/freeside/00_96046_01

ADDITIONAL CONSIDERATIONS: PROFESSIONAL OR ACCREDITATION ASSOCIATIONS

If the program staff are members of professional associations, they may be ethically required to follow certain practices regarding records management and the staff should consult with their professional associations and discuss these obligations with their supervisors. For example, the code of ethical conduct and standards of practice for the B.C. Association of Clinical Counsellors recommends the maintenance of client records under PIPA and provides practical guidance as to clinician's notes and records. For background information see:

http://bc-counsellors.org/code-of-ethical-conduct-and-standards-of-clinical-practice/

http://bc-counsellors.org//app/uploads/2015/09/5BCACC-Standard-Counselling-Reports-2011.pdf

Professional accreditation organizations provide records management guidelines and recommended practices as part of their contracted services when they audit and accredit an organization. CARF, a non-profit, is the Council of Accreditation for Child and Family Services and MCFD and Community Living BC (CLBC) both have approved CARF accreditation for community living agencies that work with children, youth and families.

http://www.carf.org/Programs/
http://www.carf.org/Programs/CARFCanada/

The Council on Accreditation (COA), also a non-profit, operates in Canada and also may be providing records management guidance to BC community organizations as part of their contracted services.

http://coanet.org/home/
http://coanet.org/accreditation/canadian-organisation-accreditation/

ACCESS TO RECORDS

Individual's Right to Access

Individuals have the right to access their own personal information held by your program, to know how you use this information and to whom and when you disclose this information. Your program has a duty to help individuals with their requests and to respond within 30 days. You can extend the response time in certain circumstances and in some circumstances you are authorized to refuse access. If the individual is dissatisfied she/he may ask the Office of the Information and privacy Commissioner (OIPC) for a review. Your program may charge individuals a minimal fee for access to their personal information but may not charge employees. After individuals have been granted access, they can request that information be corrected if they think the information is inaccurate or incomplete.[21]

PIPA

PIPA states that a person has the right to access her/his own personal information in control of the organization. (Section 23) The request must be in writing and provide enough information to identify the records. (Section 27) The applicant does not have to tell why they are requesting the information and they may receive a copy (electronic or paper) or be provided an opportunity to review the information. Legal representatives may act on behalf of minors or deceased persons and others.

The Program should take reasonable efforts to assist the applicant and should respond in a timely manner – within 30 days. There are statutory grounds for additional time if the program needs more time to gather the information or to consult with another entity regarding disclosure. (Section 29 and Section 31(1)) You should advise the applicant of your time extension and advise them that they can object to the extension by filing a complaint with the Commissioner of the OIPC. (Section 31(2))

When you do respond to the request, you should specify if you have the information requested and whether you will be disclosing all or part of the record and the manner in which access will be allowed (Sections 23 and 28). If you do refuse all or partial access you should provide the reason(s) and identify a contact person, such as a privacy officer,

[21] The BCSTH Legal Toolkit information sheet "Note Taking and Client Record" addresses this.

in your organization and advise the applicant that they may ask the Commissioner to review the program's decision.

Your program **may** refuse access if:

- The information is protected by the solicitor-client privilege;
- The information contains confidential commercial information;
- The information was collected for an investigations or proceeding that is on-going – including appeals;
- The information was collected by a mediator or arbitrator during a sanctioned mediation;
- The information is subject to a solicitor's lien. (Section 23(3))

Your Program **must** refuse access and can redact in whole or part if any of the following circumstances are present:

- The disclosure could threaten the safety or physical or mental health of another individual;
- The disclosure could reasonably be expected to cause immediate or serious harm to the safety or to the physical or mental health of the applicant;
- The disclosure would release personal information about another person;
- The disclosure would reveal the identity of the person who provided you with the applicant's personal information and that person does not consent to disclosure. (Section 23(4) and (5))

When disclosing, your program should show how your program has used and disclosed the personal information to others. (Section 23) Your program may charge the applicant a minimal fee which should be tied to the costs of producing the records and the fee should simply reimburse you and not generate a profit. (Section 32(2)) You should give the applicant a written estimate as to the total fee and you may ask for a deposit. (Section 32(3)) Your organization may not charge any fess for an employee's requested personal information. (Section 32(1))

Corrections to Records

Under PIPA, individuals may ask and organization to correct their personal information if they believe the information contains omissions or errors. (Section 24(1)) The Program has a responsibility to maintain accurate and complete records. The individual must

make a written request for a correction (Section 27) and the program should not charge a fee for addressing correction requests. (Section 32(2)) Your program should review the request and if you agree with the correction you should act as soon as possible. The program must also send the corrected information to organizations that received the previous information from you. (Section 24(2)) If your organization does not make the requested change, you must record the request and your decision and include the person's request in the file. (Section 24(3))

Disclosure of Records

A BCSTH program must only disclose personal information for purposes that a reasonable person would consider appropriate under the circumstances and to fulfill the purposes for which it was collected. You should only disclose personal information without consent in only limited and legally justified circumstances. Using personal information means that it is used in the organization to carry out the purpose for which it was disclosed to you. Disclosing this information means sharing it with another person or entity.

PIPA

If PIPA applies to your program and a third party requests the program's records which include personal information of program participants and the individual has given consent, PIPA Sections 7 and 8 authorize disclosure.

If PIPA applies to your program and a third party requests program's records which include personal information of program participants and the individual has not given consent, PIPA authorizes disclosure in the following circumstances:

- When a Treaty requires or allows for it. Section 18(1)(h)
- To comply with a subpoena, warrant or order of the court or other agency. Section 18(1)(i)
- To a public body or law enforcement agency in Canada to assist in an investigation of an offence. Section 18(1)(j)
- To respond to an emergency that threatens the health or safety of any individual or the public and notice is sent to the last known address of the individual to whom the personal information relates. Section 18(1)(k)
- To contact next of kin or a friend of an injured, ill or deceased individual. Section

18(1)(l)

- To a lawyer representing your organization. Section 18(10)(m)
- To an archival institution if the collection is reasonable for research or archival purposes. Section 18(1)(n)

PIPA also allows an organization to disclose personal information to another organization without consent if the individual consented to the original collection and the personal information is disclosed to the other organization solely for the purposes for which the information was collected and to assist the other organization to carry out work on behalf of the first organization. Section 18(4)

For information collected before the passage of PIPA, the law allows the program to disclose without consent if it is consistent with the purposes behind the original collection. However, if the purpose has changed, the program should get consent from the participant. Also, if the initial purpose is unclear, the program should get consent from the participant before disclosing the information.

The program records and summary should document the disclosure of records with and without consent and list the PIPA statute sections that support the disclosure.

PRIVACY POLICY

When developing a privacy policy, your program should review the purposes for which you collect personal information and analyze how you handle that information. The program should develop and implement policies to protect the information and to convey the policies to the public and to your employees. The program should insert privacy clauses into agreements and contracts to assure that all information is protected. Your organization should designate a privacy officer as the identified contact person and you must make that information available to the staff and the public (Section 4(3)). The executive director may be best suited to be the privacy officer. The program should inform and train staff on privacy policies and procedures.

PIPA requires your program to have procedures in place to receive and respond to requests for access to personal information and for any complaints related to personal information. Your access and complaint procedure should be easy to use. Your organization has a legal responsibility to respond to records requests as discussed above and to investigate all complaints and take appropriate steps if necessary.

Regarding procedures, you could adapt BC Housing's Privacy Policy and the BC Government Request for Access to Records Form.
http://www.bchousing.org/privacy
http://www.bchousing.org/resources/Privacy_Policy/FOI_Request_Form.pdf

For background information, the OIPC website has resources and forms on how to develop policies and a process.
https://www.oipc.bc.ca/guidance-documents/1436
https://www.oipc.bc.ca/tools-guidance/forms/#Private-Organizations
https://www.oipc.bc.ca/media/15566/howtofilecomplaintorganization.pdf
https://www.oipc.bc.ca/media/11781/form_piparequestreviewcomplaint.pdf
https://www.oipc.bc.ca/media/15062/oipc_privacy_breach_checklist.pdf

Although written for the public sector, additional resources can be found at the Office of Ombudsperson's Public Report No. 40, "Developing an Internal Complaint Mechanism" which could be adapted to meet your program's needs.
http://www.ombudsman.bc.ca

DESTRUCTION

DESTRUCTION OF RECORDS

All files should be maintained and destroyed as contractually and legally required. A records schedule which is a timetable describing the lifespan of the program participant's records should be kept indefinitely along with a closing report. A sample Records Summary form is on the next page for your review to revise as needed.

The program participant should sign a statement acknowledging that she has been notified of the retention and destruction procedures regarding agency files.[22]

A privacy officer or the Executive Director, should supervise the destruction of program participant files and program logs. **Under no circumstances is a file, or any part thereof, to be destroyed to avoid a subpoena.** Paper program records being destroyed should not be placed in recycling or garbage bins but should be shredded. Computer discs or hard drives containing personal information should also be wiped clean and any other computer records must be rendered unreadable through appropriate and effective measures.

[22] The BCSTH Legal Toolkit's Sample Informed Consent Form in the information sheet "Note Taking and Client Records" contains this information.

SAMPLE RECORDS SUMMARY FORM

Records Summary

Client Name: _____

Date of Birth: _____

Address and Telephone: _____

Services provided: _____

Dates of Contact: _____

Dates of any Disclosed Records and Recipient: _____

Dates and Description of Archived Records: _____

_____

Dates of Description of Records Destroyed and Method of Destruction:

_____

_____

_____

_____

RESOURCES

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER (OIPC)

The Office of the Information and Privacy Commissioner (OIPC) was created in 1992 and oversees the application and enforcement of BC's information and privacy laws. Individuals may complain to the OIPC if they believe that an organization or a public body has not met their legal obligations. When individuals initiate a complaint with the OIPC, the Office will generally attempt to see if a resolution can be found with the organization directly without OIPC involvement and if that is not successful an OIPC investigator will attempt to mediate a settlement. The OIPC may hold a formal inquiry if needed and they are authorized to compel testimony, order production of evidence and to enter premises. The OIPC can issue binding public orders and organizations have 30 days to comply unless they appeal to the BC Supreme Court. As part of the complaint process, individuals can sue for damages if the OIPC order is final. The OIPC can also initiate investigations if there are reasonable grounds to believe an entity is not complying with the law.

The Information and Privacy Commissioner is an Officer of the BC Legislature. The Commissioner is an independent official appointed by the government to promote and protect your information and privacy rights.

https://www.oipc.bc.ca/

INFORMATION AND PRIVACY OFFICES (FEDERAL & PROVINCIAL)

Office of the Information and Privacy Commissioner for BC
PO Box 9038 Stn Prov Govt
Victoria, BC V8W 9A4
T: 250-387-5629 F: 250-387-1696
Email: info@oipc.bc.ca
Web: http://www.oipc.bc.ca

https://www.oipc.bc.ca/guidance-documents/1438
https://www.oipc.bc.ca/guidance-documents/1466

Office of the Information Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3
T: 1-800-267-0441 F: 819-994-1768
Web: http://www.oic-ci.gc.ca

Office of the Privacy Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3
T: 1-800-282-1376 F: 819-994-5424
Web: http://www.priv.gc.ca

PROVINCIAL GOVERNMENT AGENCIES, SERVICES & REGISTRIES

Enquiry BC Phone Service
T Victoria: 250-387-6121
T Vancouver: 604-660-2421
Elsewhere in BC: 1-800-663-7867

BC Government – Information Access Operations
PO Box 9569 Stn Prov Govt
Victoria, BC V8W 9K1
T: 250-387-1321 F: 250-387-9843
Email: foi.requests@gov.bc.ca
Web: http://www.gov.bc.ca/citz/iao

NOT FOR PROFIT ORGANIZATIONS

BC Freedom of Information and Privacy Association (FIPA)
103-1093 West Broadway
Vancouver, BC V6H 1E2
T: 604-739-9788 F: 604-739-9148
Email: fipa@fipa.bc.ca
Web: http://www.fipa.bc.ca

BC Civil Liberties Association
900 Helmcken Street, 2nd floor

Vancouver, BC V6Z 1B3
T: 604-687-2919 Toll Free: 1-866-731-7507 F: 604-687-3045
Email: info@bccla.org
Web: http://www.bccla.org

The National Network to End Domestic Violence (NNEDV) in the Unites States has a Records Resource Toolkit that addresses records retention, destruction, confidentiality and privacy issues and although it references U.S. laws it is a useful reference.
http://tools.nnedv.org/faq/faqrecords

7. IMMIGRANT & REFUGEE LEGAL INFORMATION

IMMIGRANT AND REFUGEE WOMEN

Q: How can BCSTH service providers assist immigrant and refugee women?

Women who leave violent relationships often are faced with a complicated legal system including family courts, criminal courts, victim services and child protection agencies. Immigrant and refugee women who leave violent relationships enter an even more complicated scenario as layered on top of these systems are legal issues related to their immigrant or refugee status which determines their ability to stay, work and access services in Canada.

Legal options and resources do exist to support immigrant and refugee women leaving violent relationships. These resources are discussed below and in the Additional Resources at the end of this information sheet. Service providers who recognize the issues facing immigrant and refugee women and children and access community resources for them will go far in aiding their clients in navigating these systems. The best approach is to recognize and then refer.

Over 250,000 immigrants arrive each year to settle permanently in Canada. Today Canadian's immigration is diverse representing over 200 countries and 180 languages in 2012. In BC, the immigrant and refugee population is very diverse, young and female. As of 2012, 1 in 4 British Columbians were born outside of Canada.

- BC Population: 4.6 Million and 1.15 million were born elsewhere
- More than 25% of recent BC immigrants are under 24
- Women accounted for 52.1% of recent BC immigrants
- 140 countries and over 85 languages are represented in BC and it is the most linguistically diverse Province with Mandarin, Punjabi and Tagalog as the most common first languages spoken after English in BC.

BCSTH'S BUILDING SUPPORTS PROJECT

The Building Supports project is a collaborative three-year community-based project co-led by BC Non Profit Housing Association, BC Society of Transition Houses, and The FREDA Centre for Research on Violence Against Women and Children (School of Criminology, Simon Fraser University) focused on housing access for immigrant and refugee women. The purpose of the project is to understand the barriers in accessing short- and long-term housing for immigrant and refugee women leaving violent relationships, and to identify practices and policies that can facilitate the removal of barriers to safe, secure and affordable housing. The objective of the first phase of the three-year project was to understand the experiences of immigrant and refugee women attempting to secure safe, affordable and culturally appropriate housing after leaving domestic violence. This report summarizes the findings from the first phase of the project. The report also talks about solutions, key recommendations and discusses the next steps of the project. Building Supports Project Phase 1 Final Report [PDF]
http://www.bcsth.ca/sites/default/files/BuldingSupportPhase1FinalReport.pdf

This infographic presents the findings from the online surveys with transition house and multi-service agency staff. These findings do not yet include the voices of women with lived experience.
http://www.bcsth.ca/sites/default/files/BuildingSupportsInfographFinal.jpg

A final report that summarizes the findings of all 3 components of the research phase, including the perspectives of housing managers and women with lived experiences, will be disseminated widely in the Spring of 2017.

VULNERABILITIES OF IMMIGRANT AND REFUGEE WOMEN

According to the General Social Survey on Victimization, (GSS) in 2004, 4.9% of immigrant women self-reported being a victim of violent victimization in the past 5 years compared to 6.8% of CA born. In the 2014 GSS, these figures declined to 3% for immigrant women and the rate for CA born women declined as well to 4%.

Although immigrant, refugee, and non-status women experience the same forms of violence in their intimate relationships as those experienced by Canadian-born women, they also face particular barriers and vulnerabilities. One form of abuse faced uniquely by immigrant, refugee and non-status women is the threat of reporting them to the

immigration authorities and having them deported. Many women fear deportation even if they have the right to remain in Canada, because their partner may keep them uninformed of their full rights. Immigration, refugee and sponsorship processes often put one partner in a position of power over the other. The reinforcement of power imbalances works in favour of an abusive partner or spouse. Isolation, language barriers and economic dependence also are common experiences for newcomer women.

In the 2006 Census, over 1 in 3 immigrants who arrived 2 years prior fell below the poverty line. More recently in 2011 Statistics Canada, 16.5% of Immigrants were "low-income" for 7 of their first 10 years in CA and all immigrants are more likely to be low income than native born CA's. In their first years of arrival, immigrants have higher rates of unemployment than CA born residents. For example, in 2011 unemployment rates were 6.3 % for native born persons, 9.1% for all immigrants and 14.2 % for recent immigrants.

IMMIGRATION PATHWAYS

The different immigration pathways to Canada determine a person's legal status, access to services, her companions, her work and living experience, and the overall extent of her Canadian civic experience.

PERMANENT RESIDENTS
(ECONOMIC, FAMILY CLASS, HUMANITARIAN AND COMPASSIONATE, OR REFUGEE)

Permanent residents have completed all the necessary government steps and have a similar legal status to Canadian citizens. They may stay in Canada permanently, study and work but they cannot vote. They have access to all social services and have constitutional rights similar to Canadian citizens. They are eligible for: health insurance run by the provinces; free language training; help finding employment and housing; access to elementary and secondary schools and in province college tuition.

In 2014, the Permanent Residence category in Canada consisted of:

- Economic Class: 63%
- Family Class: 26%

- Refugee/Other: 11%[23]

SPONSORSHIP BREAKDOWN AND CONDITIONAL PERMANENT RESIDENTS

Spouses or partners being sponsored to reside in Canada, who are in a relationship of 2 years or less and who have no children with their sponsor at the time of the sponsorship application can be subject to a conditional permanent residence status. The sponsored spouse must live together with the sponsor in a "legitimate relationship" from the day they receive conditional permanent residence. The condition ends after the two year period.

This category arose from concerns in the government with fraudulent marriages, commonly referred to as "passport marriages," where a foreign national marries a Canadian sponsor and then leaves the sponsor as soon as or shortly after they arrive in Canada. Importantly, if a woman is sponsored by her spouse and is the victim of abuse or neglect the woman is not required to remain in the relationship. A woman facing abuse can request an "exception" to this immigration status. The Immigration Refugees and Citizenship Canada (IRCC) backgrounder on Conditional Permanent Residence states that a victim can come forward without having to worry about enforcement action. The victims can call the Call Centre at 1-888-242-2100 to request an "exception."

According to the IRCC Backgrounder considerations can consist of:

- Physical abuse, including assault and forcible confinement;
- Sexual abuse, including sexual contact without consent;
- Psychological abuse, including threats and intimidation;
- Financial abuse, including fraud and extortion; and
- Neglect: the failure to provide the necessities of life, such as food, clothing, medical care or shelter and any other omission that results in a risk of serious harm.

The IRCC backgrounder recognizes that there may be many reasons why a victim may not report abuse to authorities, such as:

[23] Facts and Figures 2014 – Immigration overview: Permanent residents. IRCC http://www.cic.gc.ca/english/resources/statistics/facts2014/permanent/03.asp

- Feeling alone and isolated;
- Being provided false information about their status in Canada;
- Language barriers; and
- Religious or cultural constraints.

IRCC officers are provided information to assist them in processing requests for exceptions and OB 480 provides operational guidance to IRCC and Canadian Border Services Agency (CBSA) staff regarding the Conditional Permanent Resident category.

The Legal Services Society (LSS) Sponsorship Breakdown Booklet provides guidance for permanent residents and conditional permanent residents who need help when the person sponsoring them in Canada is no longer supporting them, and they are unable to support themselves. It explains what happens when a sponsorship breaks down, and how to apply for legal and social assistance. There is also a resource section listing community groups and other help.
http://www.lss.bc.ca/resources/pdfs/pubs/Sponsorship-Breakdown-eng.pdf

The Canadian Council for Refugees also provides guidance at:
http://ccrweb.ca/en/conditional-permanent-residence

TEMPORARY RESIDENTS
(TEMPORARY FOREIGN WORKER PROGRAM, INTERNATIONAL MOBILITY PROGRAM, THE LIVE-IN CAREGIVER PROGRAM, THE SEASONAL AGRICULTURAL WORKER PROGRAM, VISITORS AND INTERNATIONAL STUDENTS)

Temporary or Guest Workers are authorized to remain in Canada for a limited amount of time and include visitors, temporary foreign workers and international students.

In 2014, Temporary residents totals for Canada were 353,448 and in BC 84,091 persons. Temporary International Students consisted of 336,497 students in Canada and in BC alone, 128,760 students.[24]

[24] IRCC, Facts and Figures, 2014

LIVE-IN CAREGIVER PROGRAM

Live-in caregivers are trained professionals qualified to care for elderly persons, children, or people with disabilities. Many of these workers come to Canada from abroad, often leaving behind families of their own. They work unsupervised in the private home of their employers, where they have also been required to live up until 2015.

2015 reforms by IRCC eased the process for caregivers to attain permanent residency in Canada, while reinforcing their rights as workers. Under these reforms, it is now only optional for caregivers to live with their employer however the new regulations do not forbid caregivers from living in their employer's private home. The reform was due to allegations that the live-in requirement led to workers being exploited and some exploitation was characterized by then CIC Minister Alexander as tantamount to "modern-day slavery."

Further protecting workers' rights, employers are now unable to subtract expenses for room and board from a caregiver's pay. Previously, caregivers' living expenses, including food, utilities, and accommodation, were taken out of their compensation. The reforms also established two new categories for childcare providers and caregivers for the elderly or persons with chronic medical needs who are employed in Canada on temporary work permits, but who desire permanent residence. Before becoming eligible to apply under these two new categories, caregivers must work full-time for two years and the applications will be processed in an estimated six-month period under the Express Entry immigration selection system.

Previously, processing times for permanent residency applications could take over three years, during which time many caregivers were separated from their families. Since caregivers must attain permanent resident status before they can apply to bring family members to the country, the accelerated processing times should facilitate speedier reunions between caregivers and their families.

As before, Canadian employers who seek to hire caregivers or childcare providers under the new categories must still complete a Labour Market Impact Assessment (LMIA) to prove they could not find a Canadian worker to fill the job.

West Coast Domestic Workers' Association is a non-profit organization that provides free legal information, advice and representation to caregivers and other migrant

workers, and survivors of labour trafficking in British Columbia. The Association is also actively involved in public legal education and law reform initiatives.

http://www.wcdwa.ca

NON-STATUS PERSONS

Non-status or persons without status enter or remain in Canada without the government's permission and have no legal status. There are no official statistics on non- status persons and estimates range nationwide from 20,000 to 500,000 persons.[25]

This includes women who may, initially, have had status when they entered in Canada and, subsequently, lost it or they may have entered the Canada without status. When these women are in a relationship that turns abusive they are particularly vulnerable as without a legal immigration status they may be subject to removal and deportation. In the past, the fact that these women had children and were dealing with custody issues did not prevent their removal. A tactic of control sometimes used by the spouse of the out of status woman is to claim he has a spousal sponsorship application underway but delay completion of the paperwork, or if the paperwork is submitted to threaten withdrawing it if the spouse decides to leave or report the abuse. Withdrawal of a spousal sponsorship can occur at any time up until a decision is made by IRCC.

A woman without status may apply for permanent residence based on humanitarian and compassionate grounds and it can be applied for within Canada. The Legal Services Society does provide legal representation in these cases but unfortunately, the applications approximately take 3 years to process.

Unless a woman already has a work permit, she would not be able to work legally in Canada during the application process until she is approved "in principle". Once she is approved in principle, she can apply for a work permit awaiting final action on her application. While the application is pending, the woman can apply for income assistance. An out of status woman is eligible for child support, spousal support and a division of family property in family court.

[25] Goldring, L. (2007). Institutionalizing Precarious Immigration Status in Canada. Early Childhood Education Publications and Research. Retrieved from http://digitalcommons.ryerson.ca/cgi/viewcontent.cgi?article=1001&context=ece

The evidence to support a humanitarian and compassionate application can consist of:

- Police incident reports;
- Charges or convictions;
- Reports from shelters or service providers;
- Medical reports;
- Letters of support.

Factors considered in an application are:

- The hardship to the woman if she had to leave Canada;
- The customs and culture of the woman's country of origin;
- Whether she is pregnant or has children in Canada;
- The degree of establishment in Canada.

The application should be as comprehensive as possible and the YWCA's guide provides advice for service providers as to how they can support a woman in this process.

http://ywcavan.org/sites/default/files/resources/downloads/YWCA%20Mothers%20Without%20Legal%20Status_2010_web.pdf

For background information, the YWCA also completed a 2010 report on Mothers Without Status.

http://ywcavan.org/sites/default/files/resources/downloads/YWCA%20Mothers%20Without%20Legal%20Status%20Report_2010_web.pdf

OTHER LEGAL CONCERNS

The Ministry for Children and Family Development (MCFD)

MCFD has a statutory role to protect children which is guided by MCFD's Best Practice Approaches to Child Protection and Violence against women found at:

https://www.mcf.gov.bc.ca/child_protection/pdf/best_practice_approaches_2014.pdf

Under the statutory duty to Report, anyone with reason to believe that a child may be being abused, neglected or in need of protection has a duty to report. MCFD workers may not understand the complexities experienced by immigrant and refugee women and why a mother may hesitate to leave an abusive relationship. Service providers can bridge that gap and develop a relationship with MCFD to support the client in line with the best practices noted above. For example, if a woman is advised by MCFD to leave an abusive sponsor because children are witnessing or victims to violence, this request may be grounds to expedite the permanent residence application and MCFD could provide an affidavit in support of the application.

Also, if MCFD is involved with the family the Ministry does have discretionary financial resources and can cover incidental expenses along with the cost of medical exams required for permanent residence applications and application fees.
http://www.gov.bc.ca/mcfd

The BC Family Law Act

If an immigrant or refugee woman separates from a spouse or partner, the spouse or partner still has legal responsibilities to provide support to the woman and her children.

The BC Family Law Act governs these relationships for immigrant and refugee women along with permanent residents and Canadian citizens. The Act focuses on the best interests of children when determining parental responsibilities. Immigrant and refugee women are able to apply for child support, spousal support and family assets but foreign assets may not be distributed in a BC court.

Immigrant and refugee women may be hesitant to ask for spousal support from abusive ex-partners and service providers can help the woman explore these options carefully. Factors for spousal support under the Family Law Act include: length of relationship, difference in incomes; economic disadvantage caused by union and childcare responsibilities; and earning capacity.
http://www.bclaws.ca/civix/document/id/complete/statreg/11025_01

Legal Service Society resources regarding the Family Law Act:
http://www.familylaw.lss.bc.ca/legal_issues/legalSystemBasics.php
http://www.familylaw.lss.bc.ca/resources/publications/

Protection Orders

In BC, there are different protection orders available through the courts that are designed to protect people experiencing violence from other people.

BC Family Law Act (FLA) protection orders, Section 183, are issued in Family Court (Provincial or Supreme) and address family violence between family members/ http://www.bclaws.ca/civix/document/id/complete/statreg/11025_09

Criminal Code of Canada peace bonds, Section 810, are issued in Criminal Court and can be issued against any other person including acquaintances, co-workers and dating relationships.
http://laws-lois.justice.gc.ca/eng/acts/C-46/page-202.html#h-292

These protection orders are available for all immigrant and refugee women including out of status women and these orders may support and help expedite IRCC applications. The BCSTH Toolkit Information sheet regarding Protection Orders details the differences between these orders.

The Legal Services Society also provides guidance as to these two orders in the following booklet:
http://www.familylaw.lss.bc.ca/resources/pdfs/pubs/For-Your-Protection-eng.pdf

Victim services also provides guidance:
http://www.victimsinfo.ca/en/services/victim-services-programs/victim-services-programs

Criminal Laws

If a person is charged with a crime in Canada and is not a Canadian citizen, IRCC will be notified. If arrested, the person has a right to be informed of the charges and to speak with a lawyer free of charge that is called criminal duty counsel. If the person is subsequently detained because of her immigration status, the person is also provided Immigration duty counsel.

It is critical for an immigrant or refugee woman to consult with an attorney regarding the pending criminal charges and any potential immigration effects. It is important not

to plead guilty to any criminal charges, even if reduced charges, before determining the immigration consequences. The attorney may be able to negotiate a resolution that does not result in removal.

The person can apply for a Legal Aid attorney if she cannot afford private counsel and BC Settlement Services may also provide counsel.
http://www.justiceeducation.ca/resources/free-legal-services
http://www.issbc.org/

Examples of crimes that could affect immigration status are driving while under the influence, theft, assault, and possession of illegal substances. Certain crimes make applicants inadmissible for entry such as theft, assault, manslaughter, dangerous driving under the influence and possession of illegal substances. There are IRCC grounds to review inadmissibility and to apply for rehabilitation but it is advisable to consult with an attorney to pursue this application.

If a person is convicted of a crime, IRCC's response to the conviction will differ depending on the type of crime, the kind of harm inflicted and the views of the immigration officer. The client needs to consult with an attorney as to the impact of the criminal conviction on her immigration status. While it is Illegal to assist someone to illegally enter Canada there is no duty to report that a person is out of status once they are residing in Canada.

The Legal Aid Society provides information about criminal trials here:
http://www.legalaid.bc.ca/resources/pdfs/pubs/Representing-Yourself-in-a-Criminal-Trial-eng.pdf

Human Trafficking

Human trafficking is a criminal offense under the Criminal Code of Canada. It is a modern day form of slavery that involves the recruiting, harbouring and controlling of a person for exploitation and most commonly, labour or sexual exploitation. The majority of victims of human trafficking are women and children. These victims are reluctant to come forward as they are often foreign nationals, temporary foreign workers and newcomers to Canada and are isolated and particularly vulnerable.
There is a BC Office to Combat Trafficking in Persons (OCTIP) which can be reached at a Toll Free 24/7 line in a variety of languages: 1-888-712-7974. Since 2007, OCTIP has

assisted in more than 160 human trafficking cases, providing temporary residency assistance, coordinating services and advising community agencies. More information can be found here:
http://www.publiclegaled.bc.ca/wp-content/uploads/2014/04/English-Human-Trafficking-2014_online.pdf

The Salvation Army's Deborah's Gate Program opened in 2009 and serves international and domestic women who are 18 + and have been trafficked and who are in need of protective and restorative housing. They can be reached at:
http://www.deborahsgate.ca

Additional Resources

- **Multicultural organizations in BC**
  http://www.amssa.org
  http://www.multilingolegal.ca
  http://www.mosaicbc.com

- **Legal Resources in BC**
  http://www.clicklaw.bc.ca
  http://www.bcfamilylawresource.blogspot.ca/
  http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law
  http://www.lss.bc.ca/
  http://ywcavan.org/programs/legal-education/legal-education-publications

- **IRCC Materials**
  IRCC Backgrounder for Conditional Permanent Residence
  http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob480.asp

  All IRCC Backgrounders:
  http://news.gc.ca/web/dsptch-dstrbr-en.do?mthd=advSrch&crtr.dpt1D=6664&crtr.thm1D=&crtr.tp1D=930&crtr.sj1D=&crtr.lc1D=&crtr.aud1D=&crtr.kw=&crtr.dyStrtVl=1&crtr.mnthStrtVl=1&crtr.yrStrtVl=2008&crtr.dyndVl=31&crtr.mnthndVl=12&crtr.yrndVl=2016&_ga=1.15160182.1712589762.1440113504

Registration for receiving on-line updates from the IRCC newsroom which includes backgrounders, news releases, statements or speeches here: http://www.cic.gc.ca/english/department/media/subscription.asp

As an example here is a link to the IRCC newsroom announcements for 2015 back to January of 2014: http://news.gc.ca/web/dsptch-dstrbr-en.do?crtr.sj1D=&crtr.mnthndVl=12&mthd=advSrch&crtr.dpt1D=6664&nid=832219&crtr.lc1D=&crtr.tp1D=930&crtr.yrStrtVl=2008&crtr.kw=&crtr.dyStrtVl=1&crtr.aud1D=&crtr.mnthStrtVl=1&crtr.page=1&crtr.yrndVl=2015&crtr.dyndVl=31

8. DISABILITY LEGAL INFORMATION

WOMEN AND CHILDREN WITH DISABILITIES

Q: What can BCSTH programs do to support women and children with disabilities?

Aside from the desire to keep all women and children safe, existing federal and provincial laws require and encourage service programs to provide services to persons regardless of their health status or mental or physical disability. There are approximately 3.8 million Canadians living with a physical, psychiatric or developmental disability and estimates have predicted this number will rise to 9 million by 2030. Discrimination is an action or a decision that treats a person or a group negatively for reasons such as their race, age or disability and Canadian law prohibits discrimination against disabled persons.

In Canada, there is no comprehensive federal legislation such as the 1990 Americans With Disabilities Act (ADA). The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The Department of Labor's Office of Disability Employment Policy (ODEP) provides publications and other technical assistance on the basic requirements of the ADA. It does not enforce any part of the law. Five federal agencies enforce the ADA.[26]
http://www.ada.gov/pubs/adastatute08.htm

In Canada, there is a mixture of federal and provincial laws that govern discrimination against people with disabilities.

The Canadian Charter of Rights and Freedoms, Section 15, guarantees persons with disabilities the right to “equal protection and equal benefit of the law without

[26] 1. The Equal Employment Opportunity Commission (EEOC) enforces regulations covering employment. 2. The Department of Transportation enforces regulations governing transit. 3. The Federal Communications Commission (FCC) enforces regulations covering telecommunication services. 4. The Department of Justice enforces regulations governing public accommodations and state and local government services. 5. The Architectural and Transportation Barriers Compliance Board (ATBCB), also known as the Access Board, issues guidelines to ensure that buildings, facilities, and transit vehicles are accessible and usable by people with disabilities.

discrimination based on… mental or physical disability."
https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html

The Canadian Human Rights Act makes it illegal for service providers to discriminate against people with "physical or mental disability". Disability (Section 25) is defined as any previous or existing mental or physical disability and previous or existing dependence on alcohol or a drug.

In relevant part, the Canadian Human Rights Act prohibits the following discriminatory practices:

> **Denial of good, service, facility or accommodation**
> It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public:
> (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
> (b) to differentiate adversely in relation to any individual,
> (c) on a prohibited ground of discrimination. (Section 5)
>
> **Denial of commercial premises or residential accommodations**
> It is a discriminatory practice in the provision of commercial premises or residential accommodation:
> (a) to deny occupancy of such premises or accommodation to any individual, or
> (b) to differentiate adversely in relation to any individual,
> (c) on a prohibited ground of discrimination. (Section 6)

The Act goes on to require service providers to "accommodate special needs short of undue hardship." Under the *Canadian Human Rights Act*, an employer or service provider can claim undue hardship when adjustments to a policy, practice, by-law or building would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually. It is not enough to claim undue hardship based on an assumption or opinion, or by simply saying there is some cost. To prove undue hardship, you will have to provide evidence as to the nature and extent of the hardship. http://laws-lois.justice.gc.ca/eng/acts/h-6/

In BC, the BC Human Rights Code makes illegal discrimination against persons with a physical or mental disability. Chapter 210, Section 8 of the BC Human Rights Code reads:

> (1) A person must not, without a bona fide deny to a person or class of persons a. any accommodation, service or facility customarily available to the public, or b. discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

BCSTH programs should review their policies and physical barriers regarding what inhibits sheltering some women and children and assess how to work through these challenges to ensure all people who are fleeing violence are able to get the support they need.

The resources below may help guide your program as it moves forward to accessibility for all.

Federal Government

The federal government through Employment and Social Development provides resources, support and financial assistance to people with disabilities along with their families. http://www.esdc.gc.ca/eng/disability/index.shtml

The website also provides an Accessible Resource Center which lists federal resources and tools. Particular to housing the resource contains designs, reports, financial assistance and safety considerations related to establishing universal accessible design. The resources may be useful to your program as you assess your environment. Particular to service providers, it has resources regarding inclusive meetings and accessibility. http://www.esdc.gc.ca/eng/disability/arc/index.shtml

Also, the federal government has a guide to Government of Canada services for people with disabilities and their families. http://www.faslink.org/Disability_Guide_ENG.pdf

BC Government

The government of B.C. is committed to decreasing barriers and increasing accessibility

for people with disabilities in B.C. Accessibility 2024 lays the roadmap for making B.C. the most progressive province in Canada for people with disabilities by 2024. Approximately 15 per cent of British Columbians over the age of 15 currently self-identify as having a disability.

As defined by Accessibility 2014, accessibility is about providing people of all abilities with the opportunity to live full, inclusive lives and challenging attitudes and beliefs about disabilities, while recognizing the contributions that people with disabilities can make to BC workplaces and communities.

http://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/accessibility

Regarding accessibility to housing, Accessibility 2024 includes an accessible housing building block for both the public and private housing stock in B.C. and supports people with disabilities by encouraging the development of living spaces that are accessible for all.

The 2024 goal is that B.C. has most accessible housing options in Canada.
Success will be measured:

- By the percentage of B.C. publicly-owned housing that is accessible; and
- By the percentage of new homes built to be accessible.

To help people modify their homes to meet accessibility needs, a checklist of accessibility resources has been developed which may be useful to your program.
http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/accessible-bc/accessibility-2024/docs/accessible-housing.pdf

BC Housing is in the process of reviewing the inventory of BC Housing stock to assess for accessibility. This assessment will take three years to complete and is aimed at creating a registry of accessible housing at BC Housing. BC Housing is also participating on a project, led by the City of Vancouver's Persons with Disabilities Advisory Committee, with the goal of improving access to, and availability of, wheelchair accessible housing, including the development of a registry of accessible housing. Additional participants include, but are not limited to, Metro Vancouver, BC Non-Profit Housing Association, Co-op Housing Federation of BC, Disability Alliance BC and Vancouver Coastal Health.

Non-Profits

For over 35 years, Disability Alliance BC (formerly BC Coalition of People with Disabilities) has been a provincial, cross-disability voice in British Columbia. Their mission is to support people, with all disabilities, to live with dignity, independence and as equal and full participants in the community through direct services, community partnerships, advocacy, research and publications.
http://www.disabilityalliancebc.org/ourwork.htm

Link to Community Resources on Disability Alliance BC website:
http://www.disabilityalliancebc.org/commresources.htm

DAWN -- Disabled Women's Network Canada advocates for women with disabilities in BC and across Canada. Pacific DisAbled Women's Network is based in BC.
http://www.dawncanada.net/en/?language=en

Barrier Free Canada advocates for Canadians with disabilities and advocates for the adoption of a Canadian Disabilities Act
http://barrierfreecanada.org/home/

WestCoast LEAF, Women's Legal Education Action Fund has a project entitled Mothering with Disabilities. The Project was designed to study the challenges that mothers with disabilities may face in existing laws and policies. The Project collected qualitative data through interviews with mothers with disabilities and service providers and reviewed policies and laws. The findings were presented in a report to policy-makers which included law reform recommendations.
http://www.westcoastleaf.org/our-work/mothering-with-disabilities-project/

Summary of findings
http://www.westcoastleaf.org/wp-content/uploads/2015/01/Able-Mothers-Report-Summary-of-Results.pdf

Final Report:
http://www.westcoastleaf.org/wp-content/uploads/2014/12/2014-REPORT-Able-Mothers.pdf

9. ABORIGINAL LEGAL INFORMATION

ABORIGINAL WOMEN AND CHILDREN

Q: What can BCSTH programs do to support Aboriginal women and children?

In Canada, there are 617 First Nation communities, which represent more than 50 nations or cultural groups and 50 Aboriginal languages. According to the 2011 National Household Survey, more than 1.4 million people identify themselves as an Aboriginal person, or 4% of the population. 50% percent are registered Indians, 30% are Métis, 15% are non-status Indians and 5% are Inuit. Over half of Aboriginal people live in urban centres.

Regarding **legal rights** of Aboriginal women, in 2014, The Atira Women's Resource Society published a comprehensive legal toolkit on this topic. The publication is entitled "Your Rights on Reserve: A Legal Toolkit for Aboriginal Women in BC. The link to this publication is below. The Atira Legal Toolkit was created by Aboriginal women for Aboriginal women. The chapters that relate to issues raised in the BCSTH member program survey in the fall of 2015 can be found as follows:

- Chapter 9 Family law pgs. 40-59
- Chapter 10 MCFD pgs. 60-65
- Chapter 11 Relationship Violence pgs. 67-73

http://www.clicklaw.bc.ca/resource/2821

The Atira Toolkit was created in response to gaps identified by Aboriginal women across the province in a consultation report prepared by West Coast LEAF, called "Mapping the Gap: Linking Aboriginal Women with Legal Services and Resources"

http://www.westcoastleaf.org/userfiles/file/mapping%20the%20gap-aboriginal%20-Final.pdf).

10. CWWA LEGAL INFORMATION

PARENTAL CONSENT & CWWA COUNSELLING

Q: Can only one parent consent for a minor child to participate in services such as the CWWA program?

The provincial Family Law Act (FLA) provides the framework to analyze who needs to consent to allow a minor child (under 19) to access Children Who Witness Abuse (CWWA) services. Section 39 of the FLA, specifies that if parents are living together or living separately, each parent is a guardian of that child. As a guardian, a parent has parental responsibilities towards the child to be exercised in the child's best interest. Section 41 discusses the parental responsibility to give, refuse or withdraw consent to medical, dental and other health related treatments subject to the child's ability to give their own informed consent under the BC Infants Act.[27] A minor child's participation in CWWA services would fall under these responsibilities.

The FLA makes the best interest of the child the only consideration when decisions affecting the child are made. "To be in the best interest of a child, the decisions must to the extent possible protect the child's physical, psychological and emotional safety, security and well-being." (MOJ Information Bulletin August 2015 – see link below)

After the parents are separated, both parents retain guardianship of their children unless they agree to, or the court orders, a different status. Each parent could register a child in a counselling program unless there is an order or agreement giving the Section 41 responsibilities to one parent or requires that both parents consent to services. This authority would also extend to guardians and caregivers who are taking care of minor children.

Section 40 of the FLA requires the parent or guardian who wishes to register a child in a CWWA program to consult with the other parent unless it would be unreasonable or inappropriate. This decision would depend on the circumstances of the case. Consultation may be unreasonable or inappropriate if there is a safety risk, allegations of abuse or the other party is unavailable. Importantly, an obligation to consult is not

[27] Another BCSTH toolkit information sheet discusses informed consent for minors and their access to CWWA counselling.

the same as requiring the other parent's consent. If the parent or guardian determines that it is the best interest of the child to access CWWA services and that consultation with the other parent is unreasonable or inappropriate, the factual reasons for that conclusion could be documented in the case file of the CWWA service provided.

To help with this analysis under the FLA, a CWWA program could ask the parent or guardian they are working with the following questions:

1. Is there a court order or any type of agreement in place that specifically requires consent of all guardians for health related decisions for the child?
2. Is there a court order or any type of agreement in place that allocates the health related decisions to only one guardian?

If the answer is "yes" to either question above the Program could ask the parent for copies of the paperwork and review the terms with the parent. If the order or agreement would allow for the presenting parent to authorize CWWA counselling then the counselling could proceed. If the order or agreement would not allow counselling, the program could discuss whether the order/agreement is in the best interest of the child and if not determine together the next steps for revising the order/ agreement which may involve court action.

If the answer is "no" to both questions, and there is no order or agreement in place, the CWWA program could provide services to the child with one parent's consent until they learn otherwise -- for example, they are provided an order or agreement from a court or the opposing parent that controls the issue.

If the CWWA program has done this analysis and they determine they can provide CWWA services to a child and the other parent subsequently objects to the services, the CWWA program can continue to serve that child until they are served with a court order that requires them to stop the services. The best interest of the child is the primary factor under the FLA that should support the CWWA program's actions.

For your information, here is the Family Law Act and Chapter 25 contains the provisions referenced above:
http://www.bclaws.ca/civix/document/LOC/complete/statreg/--%20F%20--/Family%20Law%20Act%20[SBC%202011]%20c.%2025/00_Act/11025_04.xml

For your information, here is an August 2015 MOJ information bulletin on this and other Family Law Act related topics:
http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/vs-info-for-professionals/info-resources/vscp-info-bulletin-aug2015.pdf

INFORMED CONSENT FOR MINORS & CWWA COUNSELLING

Q: Can a minor child receive services from a CWWA counsellor without a parent's or guardian's knowledge or consent?

A minor child can give informed consent for CWWA services without a parent's or guardian's knowledge or consent and in BC the informed consent analysis considers the maturity of the child and is not based on a certain age.

A minor child is a person under the age of 19 as established by the Age of Majority Act thus persons 19 and over can make decisions regarding their welfare. Programs should be aware that the Child, Family and Community Service Act (CFCSA) assumes throughout the Act that if a child is under 12 that the child lacks capacity to consent unless the child's developmental level and maturity indicate that the child has the capacity to consent. Some CWWA programs consider 12 as the age that requires parental consent but under the CFCSA even children under 12 can provide informed consent to CWWA services.

Reviewing the services that your CWWA program provides will help guide your program's informed consent practice. For example, if the CWWA services provided fall under the health care provisions of the BC Infants Act, that statute identifies the informed consent steps to be taken and if the CWWA services do not fall under these health care provisions then common law practices regarding a minor's capacity to consent apply. Both informed consent practices focus on the maturity of the child rather than a particular age. The intellectual and emotional development of the child should be considered along with an appreciation of the nature, consequences, risks and benefits associated with the services.

The information discussed below may provide guidance to your program.

HEALTH CARE SERVICES UNDER THE BC INFANTS ACT

In B.C., there is no legal age for consent for health care.[28] The BC Infants Act http://www.bclaws.ca/Recon/document/ID/freeside/00_96223_01 at Part 2, Medical Treatment, section 17, states that children under 19 have the right to consent to their own health care from a health care provider which is defined as **"a person licensed, certified or registered in B.C. to provide health care"**. Health care "means anything that is done for therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose and includes a course of health care".

If the CWWA program follows this health care policy approach, then the B.C. Infants Act applies. But if the CWWA counsellors are not licensed, certified or registered then the Act would not apply and the "mature minor" common law doctrine described below would apply.

Under the Act, it is not necessary to obtain consent from the "infant's" parent or guardian as long as the child under 19 is capable of providing legal consent to services. The Act considers the child has the legal capacity to consent if:

1. The provider explains the treatment to the child;
2. The child understands the nature and consequences and the reasonable foreseeable benefits and risks of the care;
3. The provider has made reasonable efforts to determine their comprehension; and
4. The provider has concluded that the health care is in the child's best interest.[29]

If the service provider explains these steps to the child and determines the child has the legal capacity to consent and the consent is voluntary, the provider can treat without permission from a parent or guardian. Consent which is voluntary would be a free act

[28] Ontario, Alberta, British Columbia, Manitoba and Saskatchewan do not identify an age at which minors may exercise health care decisions while New Brunswick and Quebec establish age limits, 16 and 14 respectively, with conditions.

[29] Regarding a child's best interest, the Program could consider the factors that courts consider in parenting arrangements under the Family Law Act (2013) which include: the child's emotional health and wellbeing; the child's views; the child's relationships with parents, guardians and other important people; the history of care; the impact of family violence; consideration of requiring parents to cooperate; and any civil or criminal proceedings related to the child's safety and wellbeing.

and not the result of pressure or fraud. If the program treats a child under 19 without parent or guardian consent, the CWWA program should consider documenting that these steps have been followed and kept in the client's file for the recommended retention period.

If the child has difficulty reading a written consent form due to language difficulties, a low level of literacy or a disability, the service provider should document the fact that oral consent was obtained from the client and perhaps have the oral consent witnessed by another staff member.

OTHER CWWA SERVICES AND SERVICE PROVIDERS

If the CWWA program does not follow the health care policy approach described in the BC Infants Act, the "mature minor" doctrine established at common law would apply. Common law means laws that are based on custom or practice or court decisions rather than statutes. The BC Infants Act, enacted in 1996, put into code basic common law rules that existed regarding obtaining consent from children under the age of 19 and the Act expressly does not state that it displaces common law practices. Plus, a BC court case, [30] has determined that common law rules can apply to circumstances involving minors that are not governed by the BC Infants Act. The common law doctrine of a "mature minor" involves an analysis that is similar to the Infants Act criteria.

For CWWA programs that determine their practice falls into this category, the program could consider the following "mature minor" factors:

1. The child must be capable of making a decision about whether to give or refuse consent;
2. The child's consent must relate to the proposed services;
3. The child's consent must be voluntary which is a free act and not due to fraud or misrepresentation;
4. The service provider must provide the child with information that would allow a reasonable person to understand the proposed services and to make a decision;
5. The child should have an opportunity to ask questions and receive answers; and
6. The services must be in the child's best interest.

[30] *Ney v. Canada (Attorney General)* 79 B.C.L.R. (2d) 47, (1993)

If the CWWA provider explains these steps to the child and determines the child has the legal capacity to consent, the provider could treat without permission from or notice to a parent or guardian. Again, it is good practice for the program to document that these steps have been followed and kept in the client's file for the recommended retention period.

If the child has difficulty reading a written consent form due to language difficulties, a low level of literacy or a disability, the service provider should document the fact that oral consent was obtained from the client and perhaps have the oral consent witnessed by another staff member.

COURT CASES

When Canadian courts have reviewed informed consent cases for minors, the courts have not established a specific age when children have the capacity to consent to or refuse treatment. Every case has been addressed on an individual basis and the courts have been flexible in their determinations. The courts tend to focus on the developmental maturity of the child along with the seriousness of the proposed health care treatment and the risks and benefits. There are no reported cases that have yet considered a mature minor's consent to or refusal regarding counselling services. The court cases have discussed medical treatments. For example, in 1987, the B.C. Court of Appeal concluded that a 16 year old girl was capable of refusing to provide a blood sample for DNA testing sought in a paternity case. [31] While in 1993, a court held that a 15 year old child of a Jehovah's Witness family who refused a life-saving blood transfusion was not capable to refuse treatment based on his inability to foresee the lethal risks of refusing care.[32]

CONFIDENTIALITY OF RECORDS

Regarding informed consent to provide support to, if a minor child meets the criteria above in either setting, the program should be aware that a child's records are confidential just as an adult's records are confidential with certain legal exceptions. The exceptions include if the child might cause serious physical harm to themselves or others, if the child needs protection as there is reportable abuse, the provider is

[31] *R v. W (D.D.)* 114 C.C.C. (3d.) 506 (1997)
[32] Canadian Bar Association, Children and Consent to Medical Care # 422 (2015)

required by court order to disclose records or the child consents expressly to the disclosure. These exceptions should be discussed in the context of the informed consent discussion with the child.

Also, child or youth records should be maintained separately from a parent's records even if both family members are working with the same program. A program's separation of files will allow for a clear approach to responding to any subpoenas or records requests as the child/youth and parent are separate individuals and their files should also be separate.

CWWA SERVICES TO MINORS IF NONE OF THE ABOVE APPLY

Once the CWWA program decides the nature of their services and how to analyze the informed consent issue they may have circumstances where a minor asks for CWWA services but the counsellor concludes that the minor does not meet the informed consent factors. In making this determination, a CWWA service provider may want to consult with colleagues or supervisors as to the minor's capacity to provide informed consent.

If after consultation, the CWWA program determines that the minor child does not meet the capacity criteria, the CWWA program would then need to seek the parent's informed consent to provide services to the child. The CWWA program could consult with one or both parents. As discussed in the Parental Consent Information Sheet above, there are circumstances when one parent can give consent to CWWA services without consulting with the other parent.

CWWA programs should also be aware that BC courts have ruled that where it is in the minor's best interest, child welfare authorities can overrule a minor's refusal to consent to treatment under the Child, Family and Community Service Act (CFCSA). [33] CFCSA Section 29 gives the child protection agency the ability to bring a court action to protect a child who they deem needs necessary health care. This action must be supported by two medical practitioners indicating that the treatment is necessary to preserve the child's life or to prevent serious or permanent impairment of the child's health. The BC case involved a 14 year old girl who was a member of the Fellowship of Jehovah's who was diagnosed with cancer and refused blood transfusions. The court deemed that the

[33] *B. (S.J.) (Litigation Guardian of) v. British Columbia (Director of Child, Family & Community Service)* 2005 BCSC 573 (2005)

treatments were necessary medical treatments to preserve her life. Even though the minor's refusal met the criteria of both the Infants Act and the common law right to consent, the court pursuant to CFCSA overturned the minor's informed consent ruling that it was in the best interest of the child to receive the lifesaving treatment. No case law currently exists that addresses counselling services or CWWA services as being in the minor's best interest and therefore potentially a "necessary health care" however this case is instructive as to what steps need to be taken under CFCSA to overrule a refusal to consent to treatment.

Additional resources include:

- Young people and the Law – includes a chart of legal rights and the associated ages – People's Law School
  http://wiki.clicklaw.bc.ca/index.php/Young_People_and_the_Law

- Children's Rights – Canadian Bar Association – Dial-A-Law-Library
  http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Your-Rights/238

- Children and Consent to Medical Care – Canadian Bar Association – Dial-A-Law-Library
  http://wiki.clicklaw.bc.ca/index.php/Children_and_Consent_to_Medical_Care_(Script_422)

- http://bc-counsellors.org/app/uploads/2015/10/130726-Commentary-re-Consent-to-Counselling.pdf