

MATURE MINOR CONSENT LAWS

WHAT DOES THE LAW ACTUALLY SAY?

BC INFANTS ACT (similar laws are in other provinces)

http://www.bclaws.ca/civix/document/id/complete/statreg/96223_01#section17

PART 2 MEDICAL TREATMENT - Section 17 - CONSENT TO MEDICAL TREATMENT

(1) In this section:

"**health care**" means **anything** that is done for

a **therapeutic, preventive, palliative, diagnostic, cosmetic** or **other** health related purpose, and includes a course of health care;"

"**health care provider**" includes a person licensed, certified or registered in British Columbia to provide health care.

(2) Subject to subsection (3), an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and if an infant provides that consent, the consent is effective and **it is not necessary to obtain a consent to the health care from the infant's parent or guardian.**

(3) A request for or consent, agreement or **acquiescence** to health care by an infant does not constitute consent to the health care for the purposes of subsection (2) unless the health care provider providing the health care

(a) has **explained** to the infant and has been **satisfied** that the infant **understands** the nature and consequences and the **reasonably foreseeable** benefits and risks of the health care, and

(b) has made **reasonable** efforts to determine and has concluded that the health care is in **the infant's best interests.**

WHAT DOES THE SUPREME COURT OF CANADA SAY ABOUT PARENTAL LIBERTY RIGHTS?

"The right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent. The common law has long recognized that **parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being.** This recognition was based on the presumption that parents act in the best interest of their child. Although the philosophy underlying state intervention has changed over time, most contemporary statutes dealing with child protection matters...while focusing on **the best interest of the child, favour minimal intervention.** In recent years, **courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated only when necessity was demonstrated, thereby confirming that the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society."**

See also this case regarding restricting a 'mature' 14 year old's medical decision making: **A.C. v. Manitoba (Director of Child and Family Services) 2009**

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do>

DISCUSSION OF MATURE MINOR CONSENT

Canada has a long and tragic history of state hubris in usurpation of parent-child relationships in the name of children's best interests. This tragic history should act as a cautionary tale.

Mature minor consent laws undermine and unreasonably usurp parental rights and authority and give parental liberty rights to unknown and unaccountable individuals.

The Canadian Charter of Rights and Freedoms: Mature minor consent laws are - it seems obvious - vague, over-broad, & arbitrary. They are based on a presumption of parental guilt: that is: it is assumed that parents will harm their children and that a very broad range of adults deemed to be 'health care providers' will not). For these reasons, these laws appear to violate the principles of fundamental justice in the Canadian Charter of Rights and Freedoms. Charter rights may be overridden but only in accordance with the principles of fundamental justice which prohibit laws that are over-broad, vague, arbitrary, disrespect the presumption of innocence and due process, etc.

Mature minor consent laws also violate children's and parents' Charter rights to liberty & security of person.

HUMAN RIGHTS LAWS: These laws also violate provincial and federal human rights laws which protect against discrimination based on "family status".

INTERNATIONAL AGREEMENTS: These laws violate international human rights agreements including the Convention on the Rights of the Child and the Universal Declaration of Human Rights which call on state parties to respect and protect parental rights as in accordance with the best interests of children.

MATURE MINOR LAWS allow, encourage, and incentivize a wide range of adults to allow and encourage minors to make decisions related to the very broad range of actions called 'health care' without parental knowledge or consent if a 'health care provider' (very vaguely defined) decides that a minor is competent to consent.

SOME SPECIFIC PROBLEMS WITH MATURE MINOR CONSENT LAWS

- * There is no requirement that the 'health care provider' assume legal **liability** and costs for any and all adverse effects resulting from their assessment, including legal costs, damage to relationships, etc.
- * There is no requirement for the 'health care provider' to **sign** anything.
- * There is no requirement for **paper work documenting** health care providers' assessments methods. There is not even a form required.
- * There is no requirement to make a **video recording** of the process by which minors' 'consent', 'agreement' or 'acquiescence' is obtained.
- * There is no requirement for a second adult **witness** to be present when minors' 'consent', 'agreement' or 'acquiescence' is obtained, or for a **signature** from this witness.
- * There is no requirement for the minor to **sign** anything.
- * There is no requirement for **objective testing** in the assessment.

- * There is no requirement for objective testing based on **sound evidence** from peer-reviewed empirical studies.
- * There is no stipulation about the **amount of time** the assessment takes.
- * There is no requirement to provide minors with the **names, licence/certification numbers, and contact numbers of 'health care providers'** making the assessments.
- * There is no requirement to **inform the minor about their legal rights in writing** and legal costs should they change their mind about the 'health care', or have regrets of complications of any kind as a result of the 'health care' they 'consented' to.
- * There is no requirement to assure **'continuity of care'**.
- * The law is founded on **presumptions of guilt, & perpetuates negative stereotypes** about parents contrary to human rights laws and the Charter.
- * These laws **undermine public and parental confidence** and trust in **'health care providers'** including **education personnel.**
- * Regarding undermining parental and public trust is educational personnel who may be considered 'health care providers' under this laws definition: see the Supreme Court of Canada case **R. v. Audet 1996** regarding the trust delegated to teachers and the power imbalance between students and teachers: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1387/index.do?r=AAAAAQAFYXVkJXQAAAAAQ>
- * These laws undermine parental authority and thereby **undermine public and parental confidence** and trust in **government, the courts and legal system.**
- * These laws unreasonably usurp parental liberty, rights, obligations, and authority and constitute a violation of the social contract between parents and state/government.
- * These laws undermine parenting, parent-child relationships, and child rearing; the state has an obligation and an interest in preserving and protecting these.
- * The law is founded on the untenable and foolish theory that all adults covered under the extremely broad definition of "health care provider" have enough time to assess a minor's 'maturity', are themselves 'mature', are wise, are pure, are without nefarious intent or bias or vested/financial/professional interest, and are incapable of making harmful decisions.