

Practice Note

Getting the Full Picture: Obtaining Consent for the Release of Information

In a 2013 Paediatric Death Review Committee Report (2013-2), and a Domestic Violence Death Review Committee Report (2013-4), the lack of full disclosure of records to child welfare workers was identified as an issue. Premature closure of files due to the client's refusal to give consent to disclosure of personal information resulted in incomplete assessments of pertinent risk factors, which contributed to leaving children in unsafe situations and ultimately, their tragic deaths. A recommendation in the PDRC 2013-2 Report was as follows:

“The Society should review their practices and consider future use of Court direction on utilizing the access to records provision of the CFSA, Section 74(1) when individuals refuse to sign consent to the release of information”.

This practice note was developed to support child welfare professionals in their duty to obtain all information required to inform a complete and accurate assessment of the immediate safety and future risk to children.

Using clinical engagement skills with families can help them understand why a thorough assessment is necessary, and help gain their co-operation in keeping their children safe. Achieving an understanding of the reason for a client's resistance may reveal that there are client concerns that could be resolved through negotiation. For example, depending on what information is needed, a CAS may require specific information from a service provider rather than obtaining a complete file.

In many jurisdictions across Ontario, community protocols have been established to support collaborative initiatives to keep children safe.

CASs are encouraged to develop protocols which anticipate the emergence of disclosure issues at critical lines of service intersections with local community partners.

When should we consider engaging the court for assistance in obtaining a client's record?

Where best efforts in the use of clinical engagement and the provisions of local community protocols are not successful, and there are high risk factors that require assessment via collaboration with service providers, the assistance of the court should be considered in situations where clients do not provide consent to release of information. In the CFSA, Sections 74, 74.1 and 74.2, “Court-Ordered Access to Records” contain provisions to obtain records by the use of a Motion or a Warrant.

There are many areas of concern that a child welfare professional would need information about in order to have a full picture of the family and potential risk to children. These include but are not limited to: the possibility of misuse of alcohol or other substance, criminal records, domestic violence, physical and mental health history and records of prior efforts with counselling and treatment.

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If the Society believes that there are reasonable and probable grounds to believe that a client's record is essential in order to complete an investigation, it is the worker's duty to ask the court for assistance in obtaining the record(s) through a warrant (S.74.1). If a verification decision is made, and a Protection or Status Review application is before the court, a motion can be brought for disclosure of records as part of the court proceedings (S.74). Consultation with your supervisor and your lawyer is essential. If you are concerned about an individual's capacity to consent, you should consult with your legal department as to the best way to proceed.

Please Remember:

- The use of client engagement strategies and gaining your client's cooperation is the best way forward in completing an assessment.
- The use of court is not the preferred option to address client resistance, but it is a tool available to you if the information you need to make your assessment cannot be obtained without it.
- Consultation with your supervisor and legal department is necessary prior to initiating any petition before the court.
- When the court is involved, this does not negate the need for ongoing clinical social work practice. The court is a tool to help us protect children and strengthen families in the achievement of positive, safe and permanency based outcomes for children.