



Newfoundland & Labrador Association of
Social Workers

**Informed Consent with Children & Youth:
Practice Guidelines for Social Work**

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Informed Consent with Children and Youth: Practice Guidelines for Social Work

Introduction

Social work is one of the largest health professions and providers of mental health services in Newfoundland and Labrador. Social workers work with individuals, families, groups and communities to enhance health and well-being.

Social workers understand the importance of informed consent in providing high quality social work services and in supporting the rights of children as contained in the United Nations (1989) Convention on the Rights of the Child. Social workers adhere to the Newfoundland and Labrador Association of Social Workers (NLASW) (2018) Standards of Practice for Social Workers in Newfoundland and Labrador and the Canadian Association of Social Workers (CASW) (2005) Code of Ethics pertaining to informed consent, confidentiality, and documentation. As a relationship-based profession, social workers work collaboratively with children/youth and their families in the provision of social work services. While the social worker may see the child/youth separately or together with their parents/family, agreements are obtained through the informed consent process of how the service will be delivered. Generally, this integrated approach works extremely well and fits with the person in environment and best practice perspective.

However, there are times when social workers grapple with informed consent when working with children and youth. Some of the dilemmas include: Can social workers provide counselling to a youth without parental consent? How much information can social workers share with parents without the child's consent? Is the informed consent of both parents needed prior to the start of the therapeutic relationship? What happens in situations where the parents want a child/youth to attend counselling, but the child/youth does not want to participate? These and other questions are not always black and white, and knowledge of relevant legislation and organizational policies are important. Social workers use ethical decision-making models, engage in supervision, review best practices, and use their professional judgment in working through these dilemmas in practice.

These guidelines will outline some of the things social workers should consider when working with children and youth as it relates to informed consent and client confidentiality. Social workers use their professional judgement and apply this information within the context of their practice and organizational policies.

Informed Consent

Informed consent is integral to the social worker-client relationship and is obtained from clients at the onset of service delivery and throughout the professional relationship as necessary. Informed consent is defined in the CASW (2005) Code of Ethics as a “voluntary agreement reached by a capable client based on information about foreseeable risks and benefits associated with the agreement (e.g., participation in counselling or agreement to disclose social work report to a third party)” (p. 10).

Age of Majority

The age of majority in Newfoundland and Labrador is 19. (*Age of Majority Act*, 1995). At 19, individuals are considered an adult. Anyone under the age of 19 is a minor.

While those age 19 are presumed capable of making their own decisions and giving consent, there is no set age of consent for counselling and therapy for minors in Newfoundland and Labrador. As noted by Spencer, Massing and Gough (2017), “Obtaining a child’s consent involves a careful analysis of legal, ethical and clinical issues in the context of the child’s developmental age and capacity” (p. 149).

Mature Minor Doctrine

When exploring consent in work with children and youth, the mature minor doctrine, which is based on common law, is an important consideration.

Minors who are deemed to have capacity to make decisions are referred to as mature minors. Capacity is defined in the CASW (2005) Code of Ethics as “the ability to understand information relevant to a decision and to appreciate the reasonably foreseeable consequences of choosing to act or not to act” (p. 26).

It is important to recognize that as children age, their maturity also increases, and youth can make more independent decisions and express what is in their best interest. However, age alone is not a predictor of capacity, as some minors age 14 may have more decision-making capacity than a minor age 15 for example. Therefore, social workers working with minors continue to assess capacity throughout the social worker-client relationship.

Generally, youth who are mature minors can provide consent for counselling. The following factors are important to consider in the assessment of a mature minor.

Factors to Consider in the Assessment of Mature Minor

Legislation

While NL does not have legislation that specifies the age of consent for counselling/therapy, social workers can review the *Act Respecting Advance Health Care Directives and the Appointment of Substitute Health Care Decision Makers* (1995). This Act states:

7. For the purpose of this section, there shall, in the absence of evidence to the contrary, be a presumption
 - (b) that a person who is 16 years of age or older is competent to make health care decisions; and
 - (c) that a person who is younger than 16 years of age is not competent to make health care decisions.

The presumption that youth age 16 and older can make health care decisions is an important consideration in the context of counselling and therapy, unless the minor is seen not to have capacity to understand the decision or the consequences. This does not mean that a youth under the age of 16 cannot make decisions, however, the onus would be on the health care professional to prove that the youth is competent to make a health care decision.

Assessment of Capacity for Mature Minor

For consent to be valid, the client must have capacity to provide consent and it must be given voluntarily (NLASW, 2018). Scott (2008) outlines four decision-making abilities that demonstrate capacity:

- Ability to understand relevant information.
- Ability to appreciate the situation and its consequences.
- Ability to reason.
- Ability to communicate and express a choice.

When providing information, social workers ensure that the information is provided in a manner that the client can clearly understand and is developmentally appropriate for the child/youth.

As capacity can change over time, it is important that social workers continually assess capacity and a minors' ability to provide informed consent relevant to each decision. In

this regard, capacity is decision-specific. Factors to consider, as outlined in *AC v Manitoba (Child and Family Services)*, 2009 include:

- the nature, purpose and utility of the recommended medical treatment and its risks and benefits; the adolescent's intellectual capacity and the degree of sophistication to understand the information relevant to making the decision and to appreciate the potential consequences;
- the stability of the adolescent's views and whether they are a true reflection of his or her core values and beliefs;
- the potential impact of the adolescent's lifestyle, family relationships and broader social affiliations on his or her ability to exercise independent judgment;
- the existence of any emotional or psychiatric vulnerabilities and the impact of the adolescent's illness on his or her decision-making ability.
- Any relevant information from adults who know the adolescent may also factor into the assessment.

When a minor is assessed as not having capacity to give consent, consent is required from a parent or legal guardian. However, the wishes of the minor and what is in the young person's best interests should be considered in the decision-making. Regardless of the age of clients, the process of sharing information with minors is of great importance and essential to promoting self-determination, dignity and respect.

Emancipated Minors

Social workers may be working with youth (16 years of age or older) who have withdrawn from parental care and are living independently. When a minor withdraws from parental care, this is known as emancipation.

Social workers providing services to an emancipated youth can assume the minor is able to provide consent for services, and parental consent or involvement is not needed; unless there are compelling reasons that the social worker feels is impacting on the minor's capacity to provide consent or relevant legislation applies.

As stated in a document released by the Government of NL relating to consent for immunizations:

The "emancipated minor rule" states that a child who has adopted a life style which indicates that he or she has assumed responsibility for own life (left home, married, entered work force) or in other ways has indicated that he/she has withdrawn from parental control and is making his/her own decisions can sign consent. (p. 1.3-2)

Ethical Decision-Making & Consultation

Social workers dealing with complex cases and ethical dilemmas pertaining to informed consent with minors should review the CASW (2005) Code of Ethics and best practices, use ethical decision-making models, and consult with their social work colleagues. If the social worker has a supervisor, consultation with this person would also be highly recommended. Social workers should assess whether a legal consultation would also be beneficial in the decision-making process. Social workers with professional liability insurance can access a free legal consultation as part of their insurance coverage. Social workers document their actions pertaining to informed consent in the client file.

CASW (2005) Code of Ethics

In navigating dilemmas pertaining to informed consent and confidentiality when working with minors, the following ethical values and guidelines are important:

Value 1: Respect for the Inherent Dignity and Worth of Persons

- 1.3.1 – Social workers promote the self-determination and autonomy of clients, actively encouraging them to make informed decisions on their own behalf.
- 1.3.2 – Social workers evaluate a client's capacity to give informed consent as early in the relationship as possible.
- 1.3.3 – Social workers who have children as clients determine the child's capacity to consent and explain to the child (where appropriate), and to the child's parents/guardians (where appropriate) the nature of the social worker's relationship to the child and others involved in the child's care.

Value 5: Confidentiality in Professional Practice

- 1.5.5 – When social workers provide services to children, they outline for the child and the child's parents (where appropriate) their practices with respect to confidentiality and children. Social workers may wish to reserve the right to disclose some information provided by a young child to parents when such disclosure is in the best interest of the child. This should be declared prior to the first session with a child.

Further to this, as outlined in the NLASW (2018) Standards of Practice:

- Social workers seek informed consent from clients prior to the delivery of social work services and throughout the duration of the social worker-client relationship as necessary.

- Social workers document client informed consent in the client record and update as necessary.
- Social workers evaluate a client's capacity to give informed consent as early in the relationship as possible and throughout the duration of the social work relationship.
- Social workers provide clients with information on the social work services being provided, risks and benefits of the proposed intervention, and alternate options that exist.
- Social workers provide clients with information on how social work records will be maintained and who will have access to these records.
- Social workers provide clients with clear information on how long the proposed intervention will take and how termination will be addressed.
- Social workers provide information on the limits to confidentiality
- Social workers provide information in a manner that is easily understood by the client and culturally appropriate.
- In situations where capacity to provide consent is limited, social workers encourage self-determination to the greatest extent possible.

Practice Considerations

Provision of Services to a Minor Without Parental Consent

In situations where a minor requests social work services without parental consent, social workers consider the issues addressed in this document as it relates to capacity and decision-making, the assessment of mature minor, actual or potential risks, and ethical decision-making. At 16, there is the presumption that the minor can consent if they have capacity. For minors under the age of 16, more prudence is necessary as social workers consider the factors pertaining to the assessment of a mature minor that were highlighted on page 3 and 4 of this document. Does the fact that the minor presented for services also indicate a sign of maturity for example? Social workers use their knowledge, skills and professional judgment in making a decision that is in the client's best interest and consult with a manager/supervisor as necessary. The rationale for providing services to a minor without parental consent must be clearly documented in the client file. Social workers also use their clinical judgment and engage the minor in a conversation on how parents may be involved as the clinical relationship develops. This is an important part of the informed consent process and assessment of the client's needs and treatment goals.

One Parent Presents Their Child for Counselling

Generally, the consent of one parent is all that is needed when providing services to children/youth who cannot provide consent for themselves. However, if there are disagreements amongst the child/youth's parents, or there are potential custody issues, more prudence is necessary.

In situations where one parent presents a child for counselling and there are custody issues, the best practice is to have consent from both parents. It is the social workers responsibility to seek confirmation of the custody agreement and document this in the client file. Depending on the age and capacity of the child, consideration given to whether they can consent to counselling is also important. In highly conflictual situations, social workers also consider the best interest of the child and determine when it might be best to proceed with the therapeutic relationship and how both parents will be involved.

Social workers working with youth when there are custody issues must be clear on their role (therapeutic role vs court assessor). If the social worker believes that one parent is seeking counselling for the child for court purposes, the social worker should mitigate this prior to the onset of the social-worker client relationship. Social workers consult with the NLASW (2018) Standards of Practice; specifically, standard 21 *Child Custody and Access* and the NLASW (2007) Standards for Child Custody and Access Assessments.

If one parent is not in agreement to the counselling, social workers must consider the best interest of the child in deciding how to proceed. A legal consultation would also be judicious. If counselling proceeds without the consent of the disagreeing parent, the rationale must be well documented in the client file.

Confidentiality of Personal Health Information

Confidentiality in professional practice is a core value of the social work profession. Social workers understand the importance of client confidentiality in fostering the social worker-client relationship and developing client trust and rapport. When working with minors, the issue of confidentiality should be thoroughly explained to the minor in an age appropriate manner, and to their parents as necessary. This is an ethical responsibility outlined in the CASW (2005) Code of Ethics as noted previously and addressed in the NLASW (2018) Standards of Practice which states:

When working with minors:

- Social workers are aware of their legal and ethical responsibilities as it relates to consent, treatment and service delivery.

- Social workers clarify the limits to confidentiality with the client and their parent, guardian or legal representative (p. 8).

In addressing the confidentiality of personal health information for minors, the following questions would be helpful to address:

- What are the limits to confidentiality?
- In what circumstances would information be shared with parents or a legal guardian?
- How will parent disclosure be handled? How will the youth be involved in the process?
- What would constitute a duty to report?

Social workers may often be faced with situations when a child or youth asks them not to disclose certain information to their parents (i.e., that they smoke cannabis, engage in unprotected sex, binge drink with their friends on the weekend, are being bullied at school etc.). These situations create complex ethical challenges for social workers. Transparency is very important in the therapeutic context and social workers navigate these dilemmas with openness and honesty with the youth on what their concerns are and why they don't want their parents to know this information, revisit how this was addressed as part of the informed consent process with the minor and their parents/guardian, and complete a thorough risk assessment to determine if parental disclosure is in the best interest of the child/youth. Social workers document their rationale for parental disclosure or non-disclosure in the client file.

Social workers may also face dilemmas when a parent asks to see the child/youths clinical file. Points to consider:

- How was this addressed through the informed consent process?
- Does the context or area of social work practice make a difference?
- What agency/organizational policies exist?
- Does the parent requesting to view the file have the legal right to do so?
- Would sharing the information be in the child/youth's best interest?
- What options exist for resolving this dilemma (i.e., would a summary of the work being done suffice, or is there something that is concerning the parent that can be addressed without sharing the client file?)

Youth Who Refuse Services

Social workers are not able to force a young person to engage in therapy or counselling against their consent. However, as part of the informed consent process social workers should engage the minor in a conversation on why they do not want to participate in the service, provide an overview of the risks/benefits of participating in the service, or not participating, explore strategies for resolving barriers to access services, and present them with options that can consider in meeting their needs. Steps taken to engage the minor in the service should be documented in the client file. If consenting, the minor's parents may want to engage in service, even if the minor is refusing.

In situations where a minor is refusing services, and the social worker believes the youth may pose a risk of harm to themselves or others, social workers consider their ethical responsibilities and legal obligations under the *Mental Health and Treatment Act* (2006) and the *Children and Youth Care and Protection Act* (2010) and consult with a supervisor or manager accordingly.

Children in the Custody of Child, Youth and Family Services

When a child is in the custody of Child, Youth and Family Services, social workers must consider consent within the context of the legislation and the policies that support the legislation. Social workers should also be familiar with the appropriate organizational policies that speak to consent for health care service delivery in this context.

A Point About Documentation

Documentation is an ethical and legal requirement for social workers. Social work documentation must include a "clear statement of social work assessment, intervention and decision-making, and evidence of services provided" (NLASW, 2017). The documentation of informed consent is also a requirement. This includes written and oral informed consent and a clear statement pertaining to the limits to confidentiality and release of client information. Social workers working with minors must ensure that there is a clear record of informed consent that is captured at the beginning of the social worker-client relationship and throughout the relationship and at different decision points as necessary.

Knowledge of Relevant Legislation

When working with minors, it is important that social workers have a clear understanding of any legislation that applies. This would include, but may not be limited to the *Personal Health Information Act* (2008); *Advance Health Care Directives Act* (1995); *Children and Youth Care and Protection Act* (2010); *Children's Law Act* (1990);

Family Law Act (1990); Mental Health Care and Treatment Act (2006) and Criminal Code (1985).

Conclusion

Social workers often face ethical dilemmas when working with minors as it relates to informed consent, confidentiality, and decision-making. This document provided an overview of some of the things social workers should consider in their work with minors. As there is no legal age of consent for counselling and therapy, social workers review this information and use their professional judgment in making decisions that are in the best interest of clients, and promote the autonomy and dignity of minors. Social workers also have an ethical responsibility to engage in continuing professional education and maintain and enhance their knowledge and skills as it relates to informed consent with minors. Continued dialogue within the profession and with colleagues from other disciplines will also assist social workers in navigating the complexity of this practice issue.

References/Resources

- A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181. Retrieved October 1, 2018 from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do>
- An Act Respecting Advance Health Care Directives and the Appointment of Substitute Health Care Decision-Makers (*Advance Health Care Directives Act*), SNL 1995, Chapter A-4.1.
- An Act Respecting Mental Health Care and Treatment (*Mental Health Care and Treatment Act*), SNL 2006, Chapter M-9.1.
- An Act Respecting the Attainment of the Age of Majority (*Age of Majority Act*), SNL 1995, Chapter A-4.2.
- An Act Respecting the Care and Protection of Children and Youth (*Children and Youth Care and Protection Act*), SNL 2010, Chapter C-12.2.
- An Act Respecting the Law of Children (*Children's Law Act*), RSNL 1990, Chapter C-13.
- An Act Respecting the Law of the Family (*Family Law Act*), RSNL 1990, Chapter F-2.
- An Act to Provide for the Protection of Personal Health Information (*Personal Health Information Act*), SNL 2008, Chapter p-7.01.
- Canadian Association of Social Workers (CASW). (2005). *Code of ethics*. Ottawa, ON: Author.
- Canadian Association of Social Workers (CASW). (2005). *Guidelines for ethical practice*. Ottawa, ON: Author.
- Criminal Code, RSC 1985, c. C-46.
- Government of Newfoundland and Labrador. (2015). *Newfoundland and Labrador immunization manual*. Retrieved August 2018 from https://www.health.gov.nl.ca/health/publichealth/cdc/section_1_general_considerations_immunizations.pdf
- Newfoundland and Labrador Association of Social Workers (NLASW). (2018). *Standards of practice for social workers in Newfoundland and Labrador*. St. John's, NL: Author.

- Newfoundland and Labrador Association of Social Workers (NLASW). (2017). *Self-assessment tools for informed consent and documentation*. St. John's, NL: Author.
- Newfoundland and Labrador Association of Social Workers (NLASW). (2015). *Ethical decision-making in social work practice*. St. John's, NL: Author.
- Newfoundland and Labrador Association of Social Workers (NLASW). (2014). *Standards for social work recording*. St. John's, NL: Author.
- Newfoundland and Labrador Association of Social Workers (NLASW). (2007). *Standards for child custody and access assessments*. St. John's, NL: Author.
- Scott, D. (2008). *Toolkit for primary care: Capacity assessment*. Retrieved May 2019 from <http://unmfm.pbworks.com/f/1%20Capacity%20Assessment%20Toolkit%20Overview.pdf>
- Spencer, E., Massing, D; & Gough, J. (2017). *Social work ethics: Progressive, practical, and relational approaches*. Don Mills, ON: Oxford University Press.
- United Nations General Assembly. (1989). UN Convention on the Rights of the Child. Retrieved May 2019 from <https://www.unicef-irc.org/portfolios/crc.html>