

Newfoundland & Labrador Association of
Social Workers

**Enduring Power of Attorney, Substitute Decision-Maker:
What is the Role of Social Work?**

Guideline Document

Adopted May 3, 2019

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Introduction

Social work is a profession committed to enhancing the health and well-being of individuals, families, groups and communities. The *Social Workers Act* (2010) provides the regulatory framework for the social work profession in Newfoundland and Labrador (NL). Social workers carry out their work with integrity and competence, and are required to adhere to the Canadian Association of Social Workers (CASW) (2005) Code of Ethics and Guidelines for Ethical Practice and the Newfoundland and Labrador Association of Social Workers (NLASW) (2018) Standards of Practice for Social Workers in NL.

Throughout the course of their work, social workers may be asked to take on the role of substitute decision-maker or power of attorney for a client or former client. The purpose of this guideline document is to provide social workers with best practice standards when addressing requests that may originate from a client, a client's family member or one's employer for a social worker to assume a position of decision-maker and to explore the role of social work when working with a client with limited decision-making capacity.

Legal Considerations

As noted in the NLASW (2018) Standards of Practice for Social Worker in NL:

- Social workers must be familiar with the laws and regulations relevant to their practice.
- Social workers seek employer consultation and review agency policies and procedures to legislative requirements impacting their practice.
- Social workers seek legal consultation as necessary to understand and interpret laws relevant to practice.

The *Advance Health Care Directives Act* (1995) governs how substitute decision-makers are appointed when individuals do not have capacity to make their own health care decisions. The *Enduring Powers of Attorney Act* (1990) governs the appointment of a power of attorney to make financial decisions once a person loses capacity to do so. Social workers must be familiar with these Acts and other relevant legislation such as the *Mentally Disabled Persons' Estate Act* (1990).

As the appointment of a substitute decision-maker or enduring power of attorney is grounded in legislation, social workers must maintain the integrity of the social worker – client relationship and be cognizant of blending their professional role with a legal role. In this regard, the CASW Code of Ethics/Guidelines for Ethical Practice and NLASW Standards of Practice provides clear direction.

Ethical Guidelines

The CASW (2005) Guidelines for Ethical Practice makes a specific reference to the role of social work in relation to substitute decision makers. Section 1.4.6 states: “In instances when clients lack the capacity to provide informed consent, social workers protect clients’ interests by advocating that their interests are represented by an appropriate third party, such as a substitute decision-maker” (p. 6).

When an individual is a client of a social worker and a professional relationship exists, or has existed, the social worker is not able to assume a third party or impartial decision-making position. Social workers are in a position of power and are responsible for maintaining professional boundaries and avoiding conflicts of interest that could compromise their professional judgement and decision-making.

Even a perceived conflict of interest, or perception that a social worker is using one’s professional position to negatively impact a client, could comprise the integrity of the social worker-client relationship. Any harm or perception of harm would not be in the public interest. Therefore, in addition to Section 1.4.6 of the Guidelines for Ethical Practice, issues pertaining to boundaries, dual and multiple relationships and conflicts of interest are important considerations. The following ethical principles, guidelines and standards are also important.

CASW (2005) Guidelines for Ethical Practice

Value 4: Integrity in Professional Practice

- Social workers establish appropriate boundaries in relationships with clients and ensure that the relationship serves the needs of clients.
- Social workers value openness and transparency in professional practice and avoid relationships where their integrity or impartiality may be compromised

Value 6: Competence in Professional Practice

- Social workers demonstrate due care for client’s interests and safety by limiting professional practice to areas of demonstrated competence.

CASW (2005) Guidelines for Ethical Practice

- 1.1.4 – Social workers limit their involvement in the personal affairs of clients to matters related to service being provided.
- 2.3 – Social workers avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgement. Social workers inform clients when a real or potential conflict of interest arises, and take reasonable steps to resolve the issue in a manner that makes the client's interests primary.
- 2.4.1 – Social workers take care to evaluate the nature of dual and multiple relationships to ensure that the needs and welfare of their clients are protected.

NLASW (2018) Standards of Practice

14) Conflicts of Interest

- Social workers strive for impartiality in their professional practice, and refrain from imposing their personal values, opinions and preferences on clients.
- Social workers avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgement.

24) Professionalism and Accountability

- Social workers adhere to the Social Workers Act (2010), CASW (2005) Code of Ethics and Guidelines for Ethical Practice, and the Standards of Practice.

Role of Social Work

While social workers should not act as a substitute decision maker or enduring power of attorney for their clients, social workers are an integral member of the health care team. In situations where a client is thought to lack decision-making capacity, social workers work with the health care team to assess capacity and advocate for client self-determination to the greatest extent possible. NLASW's Social Work and Decision Specific Capacity Assessments document further explores the role of social work in decision-specific capacity assessments. When necessary, social workers advocate for the involvement of the appropriate decision-maker relevant to the decision and work with this individual in the best interest of the client.

Social workers also have a role in working with clients to ensure they have their Advance Health Care Directives and other legal documents in place prior to a decline in decision-making capacity. This is important in terms of ensuring that the clients' values and wishes are understood when decisions are being made by the appropriate decision-maker.

Summary

Social workers often work with clients who have limited or no decision-making capacity. This paper outlined the legal considerations as well as the ethical principles and guidelines social workers must consider when approached to take on the role of decision-maker for a client or former client. NLASW has a wealth of practice resources available to assist social workers in matters related to professional boundaries, conflicts of interest and dual relationships as well as ethical decision making. In addition to utilizing these practice resources, social workers also can benefit from consultation with their social work colleagues.

References

- 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 Enduring Powers of Attorney (*Enduring Powers of Attorney Act*), RSNL 1990, Chapter E-11.
- An Act Respecting the Appointment of Guardians for the Custody and Management of the Estates of Mentally Disabled and Other Persons and the Administration of Those Estates (*Mentally Disabled Persons' Estate Act*), RSNL 1990, Chapter M-10.
- An Act Respecting the Practice of Social Work (*Social Workers Act*), SNL 2010, S-17.2.
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