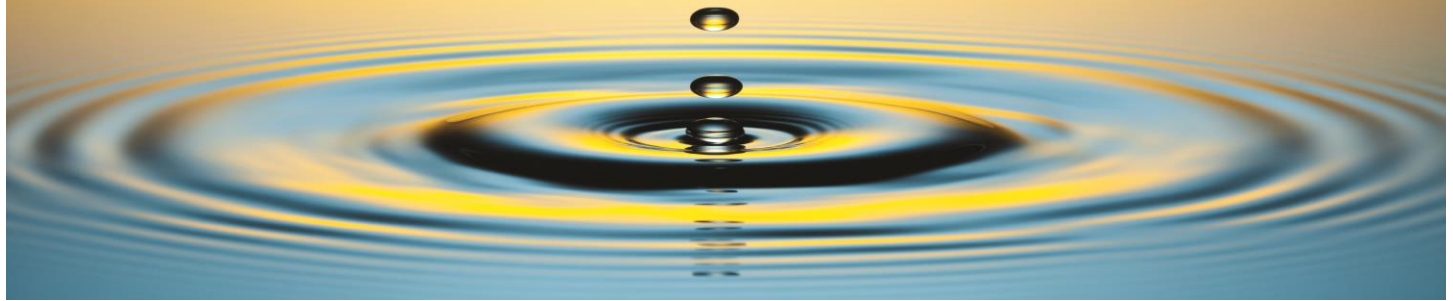


Practice Matters



Practice Matters was created as an educational resource for social workers in Newfoundland and Labrador. It is intended that this resource will generate ethical dialogue and enhance critical thinking on issues that impact social work practice. Practice Matters is provided for general information.

Intersections between Social Work Practice and Legislation

Lisa Crockwell MSW, RSW

The diversity of social work practice means that registered social workers work with individuals across the life span who are facing many challenges. Some social workers practice directly with clients while others engage in social work practice through their roles as managers and policy consultants. The employment settings vary from large government departments and health care settings to small community agencies and sole private practice. Despite the diversity, all social work practice intersects with legislation. Some laws apply to every social worker, some social workers have immense legal responsibilities under provincial legislation and others consult legislation periodically as required by a specific situation. Understanding applicable legislation, responsibilities and limits is essential to professional practice. This edition of Practice Matters will explore the intersection between social work practice and legislation and will provide guidelines for consideration. Please note that this edition is not intended to consider all pieces of relevant legislation or to constitute legal advice. The intention is to raise awareness and provide direction to acquire further information.

Regulating Practice

All provinces in Canada have legislation which regulates the practice of social work. It clarifies who can use the title “social worker” and in some provinces such as NL who can engage in the practice of the profession. The registered social worker (RSW) designation is granted as a direct result of the Social Workers Act. The authority to designate a code of ethics and standards of practice for the

profession comes from this legislation. The continuing education and re-entry to practice requirements are grounded in the Social Workers Regulations

Applicable legislation

A review of the list of statutes on the website of the Government of Newfoundland & Labrador indicates the diversity of provincial legislation which can intersect with social work practice. Well known examples are the *Children and Youth Care Protection Act*, the *Adult Protection Act*, the *Personal Health Information Act*, the *Mental Health Care and Treatment Act*, the *Advance Health Care Directive Act* and the *Human Rights Act, 2010*. On a federal level, the *Immigration and Refugee Protection Act*, the *Youth Criminal Justice Act* and the *Criminal Code* are often referenced. Due to the complexity of social work practice, multiple laws may simultaneously apply.

Guiding Practice

Recognizing that social workers practice within environments where there is a high degree of legal accountability, the *Canadian Association of Social Workers (CASW) Code of Ethics and Guidelines for Ethical Practice (2005)* and the *Newfoundland and Labrador Association of Social Workers Standards for Social Work Practice (2018)* make several direct references to knowing relevant legislation. Consider the following:

CASW Code of Ethics:

Value 1 ...When required by law to override a client's wishes, social workers take care to use the minimum coercion required. (p.4)

Value 5 ...Social workers only disclose confidential information to other parties (including family members) with the informed consent of clients, clients' legally authorized representatives or when required by law or court order (p.7)

CASW Guidelines for Ethical Practice:

1.15 In exceptional circumstances, the priority of clients' interests may be outweighed by the interests of others, or by legal requirements and conditions

1.3.5 Social workers provide services only on valid informed consent or when required by legislation or court ordered.

1.6.1 Social workers who have reason to believe a child is being harmed and is in need of protection are obligated, consistent with their provincial/territorial legislation to report...

1.6.4 Social workers who have reason to believe an adult client is being abused take action consistent with provincial/territorial legislation.

NLASW *Standards of Practice for Social Workers in Newfoundland and Labrador (2018)*

Section 11 Jurisprudence

- a) Social workers must be familiar with the laws and regulations relevant to their practice*
- b) Social workers comply with provincial and federal legislation applicable to their practice*
- c) Social workers seek employer consultation and review agency policies and procedures pertaining to legislative requirements impacting their practice*
- d) Social workers seek legal consultation as necessary to understand and interpret laws relevant to practice.*

NLASW *Ethical Decision Making in Social Work Practice (2015)* is a tool to assist social workers navigate complex ethical dilemmas. It identifies the components of ethical practice and proposes a series of steps. Both the components and the steps require social workers to identify legal considerations and consult relevant legislation when necessary. Therefore, every ethical dilemma involves consideration of applicable legislation. Sometimes, it can factor significantly other times the resolution is found in the Code of Ethics, Ethical Guidelines and Standards of Practice.

Utilizing ethical decision-making models, engaging in supervision, reviewing best practices, and using professional judgment is essential. Consider the following case scenarios which have legal, ethical and practice components.

Case Scenario #1

A social worker who recently graduated is employed in a long-term care facility. She is working with a male client for whom there were concerns about capacity. The nephew of this client who is the next of kin and closest relative approached the social worker stating that if there were capacity concerns he did not want to make decisions for his uncle. The nephew stated that he felt overwhelmed and knew that there were no other family members to take on the role. The nephew asked if the social worker could make the decisions. The social worker questioned whether there was applicable legislation.

There are many complexities associated with this request. One of the first steps the social worker would need to take is to clarify what decisions are being asked to be made and identify if there are triggers that would indicate that the client lacks capacity to make these decisions.

Through consultation, the social worker determined that the legislation which would apply for medical decisions is the *Advance Health Care Directives Act* as it contains information related to substitute decision makers. She was also cognizant that there are other Acts which would apply to other types of decisions.

Clearly identifying legal, organizational and social work roles is helpful. After consulting with her manager, they identified next steps. The first was to work with the individual client and the health care team to identify if a capacity assessment was necessary. The social worker in this scenario consulted the practice resource *NLASW Social Work and Decision Specific Capacity Assessments (2012)* to understand that capacity assessment is within the scope of social work practice. As questions of capacity were evident, the social worker worked with the health care team to assess decision specific capacity. The team determined there was capacity in some areas and not in others. Client self-determination in decisions where the client had capacity was promoted. The social worker and her manager took the opportunity to seek clarity about application of the law in practice through consulting with legal counsel, administration and the quality and risk departments of the health care institution. Questions such as the intent of the legislation, potential conflict of interest, provincial policy respecting substitute decision makers and organizational responsibility were raised.

After consulting the NLASW guideline document *Enduring Power of Attorney, Substitute Decision Maker: What is the Role of Social Work? (May 2019)* which reviews the responsibilities of social workers under the CASW Code of Ethics and Ethical Guidelines she was clear that social workers should not act as substitute decision makers for clients.

Throughout this process she clarified her role and provided support and counselling for the nephew to address the challenges he was experiencing. This led to him being able to appropriately take on the role of substitute decision maker when required to ensure that the client's needs were being met.

Case Scenario #2

A social worker in a hospital setting does not want to engage in conversations with clients who request information about Medical Assistance in Dying and questions if she is legally obligated.

With the passing of Bill C-14 individuals have a legal right to seek medical assistance in dying. The CASW Code of Ethics supports an individual's right to self determination (consistent with their capacity and the rights of others) and to make decisions based on voluntary, informed consent. Working with individuals and families providing counselling and support at the end of life including

being involved in the care of those who request medical assistance in dying is within the scope of practice of the profession. Social workers may be called upon to be present at the time of death.

This is a situation whereby a client has a legal right and social work as a profession has a role from a scope of practice and ethical perspective. But what about the social worker who does not want to be involved?

This social worker consulted the NLASW practice document *Medical Assistance in Dying: What Social Workers Need to Know (2016)* and found the following information.

While all social workers uphold client's rights as an ethical obligation, there is recognition in legislation of people's freedom of conscience and religion as outlined in Section 2 (a) of the Canadian Charter of Rights and Freedoms. Therefore, health care providers including social workers are not compelled under legislation to assist in MAiD. Social workers do have an ethical responsibility to strive for impartiality and refrain from imposing values on clients. Therefore, social workers must inform their employer and take steps to refer clients to another social work colleague or health care provider.

Case Scenario #3

A social worker in private practice is wondering which laws apply when considering both the capacity of a teenager to consent for counselling and the disclosure of information to parents. This is an example where it is possible for several pieces of legislation to inform a decision and illustrates the importance of both legal advice and not consulting law in isolation.

Social workers in private practice are custodians of personal health information under the *Personal Health Information Act (PHIA)*. The purpose of PHIA is to govern the manner in which personal health information may be collected, used and disclosed across the health care system in both the public and private sectors. The Department of Health & Community Services, Government of Newfoundland and Labrador provides comprehensive information about PHIA at <https://www.health.gov.nl.ca/health/phia/>

Depending upon the exact age, capacity and nature of the information to be disclosed the following legislation could be relevant: *Children and Youth Care and Protection Act* (or the *Children, Youth and Families Act* when it is proclaimed); *Children's Law Act*; *Family Law Act*; the *Mental Health Care and Treatment Act*, the *Age of Majority Act* and the *Advance Health Care Directives Act*.

Age of Majority Act, for example states the age of majority in Newfoundland and Labrador is 19. Therefore, anyone under the age of 19 is a minor. While there is no set age of consent for

counselling and therapy for minors in Newfoundland and Labrador, Section 7 of the *Advance Health Care Directives Act 1995* states:

7. For the purpose of this section, there shall, in the absence of evidence to the contrary, be a presumption
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- (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.

Since the teenager in this scenario was 17 years old and the nature of the counselling services was coping with anxiety, the social worker determined that the information provided in *Value 5 of the Code of Ethics* requiring disclosure would guide this intervention. The social worker also utilized the *NLASW Self-Assessment Tool for Informed Consent and Documentation (2017)* to guide her practice throughout the counselling relationship with all clients.

Questions for Consideration

Everyday social workers deal with complex situations where legislation, ethics and practice intersect. Generally, the practice parameters are clear however when dilemmas and uncertainties respecting social work practice and legislation arise the following are questions to consider:

1. What is the legislation relevant to the issue?
2. Where can I obtain information about this legislation?
3. Does my employer have policies about the administration of the legislation?
4. Have I consulted with my manager or supervisor?
5. Do I need legal advice from my organization?
6. What, if any, is the legal advice obtained from my organization?
7. Do I have access to advice from a quality assurance or risk manager?
8. Do I need my own legal advice?
9. If so, do I have professional liability insurance with access to legal consultation?
10. Would I benefit from an ethical consultation?
11. Does NLASW have a practice resource which addresses this issue?

Conclusion

Documents to guide social work practice such as the CASW Code of Ethics (2005), CASW Guidelines for Ethical Practice (2005), NLASW Standards of Practice for Social Workers in

Newfoundland & Labrador (2018), ethical decision-making models, and best practice guidelines consider the intersections with legislation. Consultation is always advisable and as with all forms of intervention, social workers should document the actions taken to address an ethical or legal dilemma.

While social workers in private practice are required by Section 18(1)(b) of the Social Workers Act to obtain professional liability insurance, it is strongly recommended that all social workers practicing in this province have insurance which includes access to legal consultation. Employer insurance may not provide sufficient coverage in all circumstances. More information about professional liability insurance for social workers can be found on the Canadian Association of Social Workers website at <http://www.casw.bmsgroup.com/index.html>

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