

Newfoundland & Labrador
**College of
Social Workers**

**SOCIAL WORK
&
DECISIONAL CAPACITY**

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INTRODUCTION

Social workers in Newfoundland and Labrador practice at the clinical, management, community, and policy levels, and exemplify leadership qualities in their work with individuals, families, groups, and communities to enhance health and social well-being.

Social workers are acutely aware of provincial trends impacting on individuals, families, groups, and communities. In Newfoundland and Labrador, as with other Canadian jurisdictions, these include the proliferation of adults with complex needs who require a legal guardian, and changing demographics including population aging, immigration, and intra-provincial migration. Clients are increasingly presenting with complex medical, cognitive, and behavioural needs.

The purpose of this document is to outline and discuss the role of social work in the assessment of decisional capacity, to provide an overview of some of the practice issues and ethical considerations, and to provide an opportunity for discussion, critical reflection, and practice analysis. Any capacity assessment can potentially conclude that an adult can no longer make one or more decisions for themselves. This is a restriction of liberty and human rights that must be considered as a balance between autonomy and protection.

CAPACITY AND SOCIAL WORK

Social work practice is grounded within the context of human rights. The Canadian Association of Social Workers (CASW) (2024) Code of Ethics outlines the values and principles that guide social work practice including a clients' right to self-determination, respect for the inherent dignity and unique worth of persons, and the right of clients to give informed consent.

Capacity is defined in the CASW (2024) 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. Capacity is specific to each decision; thus, a person may be capable of deciding about a place of residence, for example, but not capable of deciding about treatment. Capacity can change over time." (p. 28). In Newfoundland and Labrador, several pieces of legislation consider and assess capacity differently. These Acts include: the Advance Health Care Directives Act, the Mentally Disabled Persons Estates Act, the Mental Health Care and Treatment Act, and the Adult Protection Act. These must be considered when assessing or discussing capacity. In reflecting on one's ethical responsibilities pertaining to capacity, the following excerpts from the CASW (2024) Code of Ethics and the Newfoundland and Labrador College of Social Workers (NLCSW) (2024) Standards of Practice for Social Workers in Newfoundland and Labrador are vitally important.

CASW (2024) Code of Ethics: Value 1 – Respecting the Dignity and Worth of All People

Guiding Principles:

1.1: Social workers respect the inherent dignity and worth of all people.

1.2: Social workers promote the self-determination and autonomy of all people.

1.3: Social workers uphold the human rights and fundamental freedoms of all people consistent with applicable rights, and legislation.

1.6: Social workers respect the rights of service users to make decisions based on voluntary consent when possible.

NLCSW (2024) Standards of Practice:

- Social workers promote the self-determination and autonomy of clients, actively encouraging them to make informed decisions on their own behalf.
- 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.
- When an assessment determines that a client lacks decision-making capacity, social workers seek informed consent from the client’s legally authorized representative as appropriate.
- 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.
- Social workers must be familiar with the laws and regulations relevant to their practice.
- Social workers comply with provincial and federal legislation that is applicable to their practice.

As noted in the CASW (2024) Code of Ethics, “Social workers demonstrate respect for the right of every person to participate in making decisions in all matters affecting them based on informed consent, consistent with their capacity while considering the rights of others” (p. 5). Social workers across all fields of practice are involved in the assessment of capacity in their work with individuals, families, and groups. As part of the informed consent process, social workers continuously strive to ensure that individuals have all the information they need to make informed decisions, that they understand the information, and can appreciate the risks and benefits of their decisions. Social workers are also knowledgeable about how different pieces of legislation consider and assess capacity and identify which piece or pieces may apply in any given situation.

CAPACITY VS. COMPETENCY

The terms competency and capacity are often used interchangeably by health care professionals. While competency and capacity are related concepts, they are also very distinct. Competency is a term that implies a global ability to understand and appreciate, whereas capacity is decision specific. The language of capacity is being used more by health care professionals within the context of decision-making and service delivery.

Scott (2008) outlines four decision-making abilities that demonstrate capacity:

- 1) Ability to understand relevant information.
- 2) Ability to appreciate the situation and its consequences.
- 3) Ability to reason.
- 4) Ability to communicate and express a choice.

Capacity is not all or nothing, and according to Wahl (2007), “Capacity is also issue specific. It relates to a particular decision” (p. 17). Individuals may be quite capable of making some decisions (e.g., personal care) and not others (e.g., financial decisions). These decisions can range from the simple to the complex. Capacity can also change over time (CASW, 2024, Code of Ethics, p.28), and can fluctuate based on factors such as time, location, medications, or physical illness (Kapp, 2004).

ASSESSMENT OF CAPACITY

The assessment of capacity is integral to the social worker-client relationship. In working with children, adolescents, adults, and older adults, social workers seek to ensure that clients understand all the information they need to make well informed decisions and engage in the therapeutic relationship.

NLCSW developed [Informed Consent with Children and Youth: Practice Guidelines for Social Work](#) which explores capacity and informed consent within the context of social work practice with children and youth that social workers should review. Therefore, the remainder of this document will focus on adults and decisional capacity.

When working with adults and older adults, capacity is presumed, unless in the professional judgement and assessment of the social worker there are concerns about the client’s ability to understand information and appreciate the consequences of their decisions. Depending on the practice context, or in keeping with legislation, a more formal capacity assessment may be required.

If there is concern that an adult client is at risk of abuse, harm, or neglect (including self-neglect), and lacks capacity, social workers seek consultation pertaining to their responsibilities under the provincial Adult Protection Act. Under this Act, there must be a valid trigger to question the capacity of the adult. In those circumstances, a more formal, interdisciplinary capacity assessment is initiated. An interdisciplinary assessment process has been developed, and social workers coordinate and participate in team assessments under the Act. Additional information about this process can be found at [Adult Protection - Children, Seniors and Social Development \(gov.nl.ca\)](http://gov.nl.ca).

In all situations where there are concerns about a client's decisional capacity, social workers work with the client, or the client's legal representative, to ensure appropriate service delivery and client self-determination to the greatest extent possible.

Capacity can be assessed across different decisional domains. As noted by Wahl (2007), decision-making can be related to property (financial management) and personal care (health care, nutrition, hygiene, clothing, shelter, and safety). A decision specific capacity assessment can be completed to assess an individual's capacity to make decisions in one or more of these areas. However, it is important to note that these assessments should only be completed when there is an identified need or valid trigger, when it is in the best interest of the client, and with the consent of the individual where appropriate and where possible. According to Scott (2008) "the assessment should not be performed to serve the interests of others" (p.9); thus, demonstrating the importance of the assessment of capacity across the continuum. Decisional capacity is decision specific (Moberg & Rick, 2008; Kapp, 2004) and while someone may not have capacity to decide in one area, this does not preclude them from decision-making in other areas.

The assessment of risk is an integral part of the capacity assessment process. According to Soniat & Micklos (2010), it "helps the social worker determine whether the client has the capacity to function within his or her environment" (p. 73). Knowing and understanding the client's tolerance for risk and previously held values, beliefs and behaviors is also important in completing the assessment of capacity.

When it is determined that a formal capacity assessment is necessary, there are several tools that could be incorporated (e.g., Standardized Mini-Mental Health Examination, Capacity Assessment tool, MacArthur Competence Assessment tool, etc.). Many of these tools have been developed to assist in the assessment of capacity to make medical decisions. Molloy, et al (1999), provides numerous, specific examples of such capacity assessments in the domains such as health, property, driving, sexuality, and intimacy. Social workers may choose to use a specific assessment tool but must ensure competency with the tool and be aware of any of its limitations.

Although capacity tools may assist health care professionals in exploring capacity, the clinical interview is the key social work tool for assessing capacity. For the social work assessment, capacity

questions must be tailored to the specific decision in question and where appropriate a team approach is necessary. The questions are meant as a guiding framework for the conversation which happens with the client and are not meant to be prescriptive. There may be times that open and closed ended questions may be more effective depending on the individual needs of the client. Social workers must use their own clinical skills in individualizing questions to each client and situation. Assessment tools are not assessments in and of themselves. Clinical analysis and professional judgement are critical components of any assessment process.

ROLE OF SOCIAL WORK

Social workers bring essential knowledge and skills to the assessment of decisional capacity and play an integral part of a team-based approach. The specific social work skill set includes assessment, collaboration, communication, conflict resolution, advocacy, clinical judgement, and ethical decision-making. According to Soniat & Micklos (2010), “social workers bring a unique perspective to capacity assessment by holistically examining the person within the context of his or her social environment and by assessing both functional capacity and risks” (p. 60). It is this ‘person in environment’ framework that allows for a comprehensive assessment of capacity.

A key role for social workers in many practice areas in the formal assessment of decisional capacity can include the coordination of an interdisciplinary capacity assessment process. This may include assessing and advocating for a decision specific capacity assessment, completing the assessment of risk, administering appropriate assessment tools, completing the social work assessment interview, communicating with clients and family members, gathering collateral information, and educating and communicating with members of the interdisciplinary team.

ETHICAL DECISION-MAKING AND CRITICAL REFLECTION

Ethical issues often arise within the context of capacity and decision-making, and social workers may experience ethical dilemmas when working with clients who are making what are perceived to be risky decisions. In working through these dilemmas, social workers consider:

- At what point does risk become a factor in limiting a person’s right to make decisions?
- What part does our own tolerance for risk play in our work with clients?
- How does our perception of risk differ in relation to the populations with whom we may be working?
- Are there elements of paternalism? Ageism? What about other isms?
- Are there cultural or other relevant considerations that may need to be explored?

- Where is the balance between autonomy and beneficence, and from whose perspective?

The assessment of decisional capacity is fundamental to working through many of these ethical dilemmas, along with a comprehensive risk assessment. Importantly, Healey (2003) identified decisional capacity as a factor which influences social workers' support of client autonomy and self-determination.

Ongoing critical reflection is an essential part of social work practice and ethical decision-making. Antle (2005) proposed an ethical decision-making framework that can help guide social work discussion and reflection (see Appendix A). This model suggests that one must consider the policies/practices of the organization, professional ethics, relevant legislation, and the client's own priorities and needs when ethical issues and challenges arise in practice. Using ethical decision-making tools such as the NLCSW [Ethical Decision-Making in Social Work Practice](#) is also recommended.

A Note About Risk Tolerance

As professionals we need to consider our own risk tolerance within the context of the social worker-client relationship as it relates to client self-determination, informed consent, capacity and decision-making, best interest of the client, human rights, and legal and legislative responsibilities. It is important to note that one's tolerance for risk is not always static and can change over time based on factors such as one's personal values and beliefs, stage in career, area of practice, legislative requirements, workplace culture, access to supervision or consultation, client's risk tolerance, and cultural context. As noted in the CASW (2024) Code of Ethics "Social workers continually develop self-awareness and practice self-reflection to guide their practice and personal well-being" (p.15).

Questions for Reflection

When considering ethical and practice implications, the following questions are meant as a guide to stimulate critical reflection:

1. Have there been situations in your practice where a decision specific capacity assessment would have been helpful?
2. Does your personal tolerance for risk influence your professional ability to assess risk and capacity?
3. What part of care can include risk? Does the idea of providing care mean removing all risk?
4. Is there a point at which care becomes paternalistic? Is this ever justified?
5. How do we educate families and society to understand an individual's right to make

decisions that others may not agree with?

6. Do you see a link between decision specific capacity assessments and advocacy?

DOCUMENTATION

As noted in the NLCSW (2024) Standards of Practice, “Social work documentation is an essential component of social work practice. The primary purpose of social work recording is to provide a clear statement of social work assessment, intervention, and professional decision-making” (p. 7). It is therefore important that social workers document their work pertaining to the assessment of client capacity in keeping with professional standards, organizational policies, and legislative requirements. As noted in the NLCSW (2024) Standards of Practice, “Social workers ensure that social work records reflect the service provided” as such, noting reasoning for capacity assessment as well as what decision area is being assessed would be documented (p.7).

CASE SCENARIOS

The following case scenarios have been included to encourage practice analysis and discussion. As you reflect on the case scenarios consider the following questions:

- 1) What are the ethical issues?
- 2) What elements of risk do these scenarios highlight for you? What is your tolerance for risk in these scenarios?
- 3) Are there any elements of paternalism? Ageism? What about other isms or biases that might need to be considered?
- 4) Are there assumptions being made about the individual’s capacity?
- 5) How might a decision specific capacity assessment be helpful?
- 6) Is there anything that you would have done similarly/differently? What is your rationale?
- 7) What supports would help you deal with these or similar cases?

Case Example 1

Annie recently moved into a long-term care facility. She had suffered a stroke the previous month that left her almost completely paralyzed and aphasic (unable to speak). She could make some utterances but relied on a letter board to spell words and point at pictures of common items (e.g., a glass of water or a toilet). Due to her physical challenges, Annie was placed on a diet of pureed

food – blended to the point of being able to be consumed through a straw.

Annie’s cognitive abilities never diminished after the stroke, and she often expressed frustration and great sadness at her physical limitations. One of the things she hated the most was her pureed food.

As Christmas approached, Annie explained to the facility’s social worker that she would not eat a pureed meal on December 25th. She wanted, and was going to have, a turkey dinner with all the trimmings, “and not through a damn straw” (taking the extra time to spell out the expletive).

Understandably, this request posed challenges for the care team, as the possibility of Annie choking from consuming foods of an unmodified texture was an identified risk. In addition, Annie’s husband and two sons were emphatic in their discussions with Annie, with the facility staff and with the facility administrator – “Annie *is not* to eat a regular Christmas dinner, or the facility will be held liable.” They were genuinely concerned for Annie’s welfare and saw the threat of litigation as one of the only means at their disposal to, as they described, ‘protect’ Annie.

Because Annie’s decision caused such moral distress, a capacity assessment was undertaken with her permission to determine whether she understood the potential consequences of her decision. As suspected, the assessment indicated clearly that Annie still had decisional capacity. Even after a frank discussion outlining the risks, Annie could not be swayed.

With facilitated discussion led by the social worker, the care team came to realize that Annie was able to make her own informed decision. A subsequent meeting with Annie and her family was very emotional, with her husband and children saying they did not want to lose her to something “as silly as turkey and gravy.” But it was Annie’s decision. From a liability perspective, the appropriate waivers were signed. As for Annie, she enjoyed her Christmas dinner on her terms and plans to do so again this year.

Case Example 2

Helen is a 68-year-old female who had been living independently in the community until she was admitted to the hospital following a fall. Her husband passed away the previous year, and her son, who is very protective of her, lives several hours away.

After being admitted to hospital, Helen developed a delirium from a urinary tract infection. Her son travelled to be there with his mom. During this time, the son requested a meeting with his mom’s health care team and expressed his worry about his mom living alone and that a personal care home may be the best option for her after she is discharged from the hospital. He notes that his father’s death has been rough on his mother, and he thinks she may be suffering from

depression and anxiety and not able to properly care for herself. He attributes this to his mom's fall. As his mom's next of kin, he feels that the referral process for the personal care home should be started sooner rather than later.

After a few weeks, Helen's delirium began to clear, and she talked about going home. Her son talked to her about the personal care option and Helen was adamant that this was not where she wanted to live. The son asked the hospital social worker to intervene with his mom and "make her see" that the personal care home was the best option.

While the client's son expressed concern about his mother's ability to live independently, should this factor into the mother's right to self-determination? Given the expressed concerns about Helen, the social worker meets with Helen to discuss the risks that have been identified. Helen was able to express her understanding of the issues raised by her son, the risks that may be present, and her decision to continuing to live independently. As capacity was not seen to be limited, the social worker felt that it was important to uphold the client's right to self-determination and to work with the client in exploring care options (e.g., home support) that she may benefit from upon discharge from the hospital.

Case Example 3

Brenda, an 85-year-old woman had been living alone in her own home since her husband passed away fifteen years ago. Two years ago, an assessment was completed with her consent (with assistance from her son as she was not literate) and private home care was arranged by the son. The client was assessed as requiring 15 hours per week of support for help with meals, housework, and medication compliance. The initial medical assessment suggested the client may have some 'mild dementia'.

The son played a significant role with the organization of her care. However, as the service evolved, the client began to express discontentment with her son and his 'bossy' approach. She kept insisting she did not want to have him as involved with her care, but he kept insisting on playing a role stating his mother could not make her own decisions. At one point, the son decided to fire the home care worker and hire another against the client's wishes.

After meeting with the client, the social worker began to question the impact that the assessment of a 'mild dementia' had on the client's ability to make decisions. With the client's consent, the social worker collaborated with the client's family physician, and a geriatric psychiatric assessment was arranged.

The client was assessed, and the concerns regarding her vulnerability due to low intellectual functioning were discussed however she was deemed capable of making her own care decisions regarding her home care service. The home care worker that had been fired, was reinstated, and

the son was notified by the client that she no longer wished any involvement from him in her care-related decisions.

Case Example 4

Paul is a 40-year-old man who spent 1 week in the hospital following a motor vehicle accident. While he still requires assistance with his mobility, he told hospital staff that he was leaving the hospital, even if he was not medically discharged, and refused to explore home care options. His brother calls the social worker to demand that Paul stay in hospital or undergo rehabilitation prior to leaving the hospital. The social worker appreciates the concerns of the client's brother and hospital staff. However, in talking with the client, there were no concerns about his decisional capacity and while there are risks, the client fully understands the consequences and risks of his decision to leave the hospital against medical advice. The social worker provides the client with information on home care options and community programs and support that are available. The social worker documents this information in the clinical record and upholds the client's right to self-determination.

WHAT SOCIAL WORKERS NEED

- 1) Access to continuing professional education and training in decision specific capacity assessments.
- 2) Access to guidelines and resources in completing decision specific capacity assessments.
- 3) On-going access to supervision, consultation, and support to guide decision-making, including support from employers to be engaged in the work.
- 4) Opportunities for dialogue and discussions with social work colleagues and members of the interdisciplinary team.
- 5) Inclusion of capacity in the social work education curriculum.

CONCLUSION

Social workers have a professional, ethical, and legal responsibility to intervene in situations where there is a risk of harm to self or others. Depending on the context of practice, level of contact with the client the capacity assessment may not be the end of the interaction with the client and consideration would be given to ongoing communication and support of the client in determining what is next.

The purpose of this document is to elucidate some of the key questions and issues for social work practitioners when the capacity of a client is called into question, either by a family

member, or the system itself, and to generate dialogue and critical reflection. While the assessment of decisional capacity is not a new role for the social work profession, the discussion is important and timely given the changing nature of our provincial demographics.

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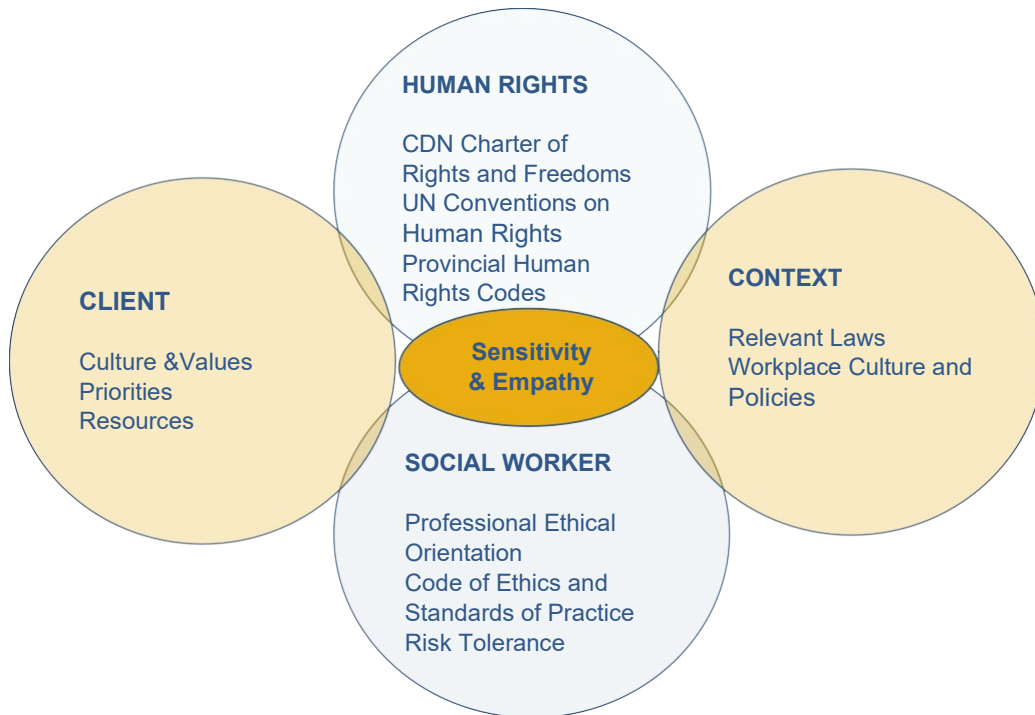
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Appendix A

Components of Ethical Practice



B.J. Antle, 2005 2