

2021

**STANDARDS REGARDING THE  
CAPACITY OF MINORS TO CONSENT  
TO SOCIAL WORK SERVICES**

New Brunswick Association of Social Workers

*Adopted by the Board of Directors February 27, 2021*





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## 1.0 Introduction

The New Brunswick Association of Social Workers (NBASW) role includes protecting the public and promoting excellence in social work practice. In its role of public protection, the NBASW, in collaboration with the Ethics, Practice Issues, and Professional Standards Committee, has developed the *Standards Regarding Capacity of Minors to Consent to Social Work Services*. These Standards outline when children and youth can consent to receive social work services. In developing these Standards, the NBASW hopes that social workers working with minors are given additional direction and clarity of what is expected of them. Further, the Standards will ensure that more clients can access the services they need when they need them most.

## 2.0 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. The NBASW Code of Ethics defines informed consent as an “agreement reached voluntarily by a competent client after discussion as to foreseeable risks and benefits associated with the disclosure of confidential information”.<sup>1</sup>

Regarding Client Self-Determination (section 1.3) and the onset of social work services, the NBASW Code of Ethics states:

- 1.3.2 Social workers, at the earliest opportunity, shall discuss with clients their rights and responsibilities and provide them with honest and accurate information regarding the following:
- the nature of the social work service being offered;
  - the recording of information and who will have access to such information;
  - the purpose, nature, extent and known implications of the options open to them;
  - the potential risks and benefits of proposed social work interventions;
  - their right to obtain a second opinion or to refuse or cease service (recognizing the limitations that apply when working with involuntary clients);
  - the client’s right to view professional records and to seek avenues of complaint; and,
  - the limitations on professional confidentiality.

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<sup>1</sup> New Brunswick Association of Social Workers (2007). *Code of ethics*. Retrieved from <https://www.nbasw-atsnb.ca/assets/Uploads/Complete-Code-of-Ethics2.pdf>

Furthermore, regarding Informed Consent (section 1.4) the NBASW Code of Ethics states:

- 1.4.1 Social workers shall ensure that clients understand informed consent and the circumstances in which it may be required.
- 1.4.2 Social workers shall provide services to clients only on valid informed consent or when required to by legislation or by a court.
- 1.4.3 Social workers shall evaluate a client's capacity to give informed consent as early in the relationship as possible.

### **3.0 Mature Minor Doctrine**

The legal age of majority in New Brunswick is 19 years of age.<sup>2</sup> However, when working with minors, individuals under 19 years of age, it is important to consider the mature minor doctrine. The mature minor doctrine is a common law that indicates that minors who possess the capacity to understand the nature and consequences of a proposed treatment are able to consent to receive services.<sup>3</sup> The Canadian Association of Social Workers (CASW) defines capacity 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”.<sup>4</sup>

#### **3.1 Assessing the Capacity of a Mature Minor**

Before an individual can be considered a mature minor, social workers must assess whether the individual has the capacity to consent to services by ensuring they possess the four capacity indicators. This preliminary assessment shall take place during the first meeting with a client and must be documented in the client's file.

The four decision-making abilities clients require to be able to demonstrate capacity include:

- The ability to understand relevant information;
- The ability to appreciate the situation and its consequences;
- The ability to reason; and
- The ability to communicate and express a choice.<sup>5</sup>

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<sup>2</sup> *Age of Majority Act*, RSNB 2011, c 103. Retrieved from <http://canlii.ca/t/lccp>

<sup>3</sup> Court of Appeal decision *Region 2 Hospital Corp v Walker (NBCA)*, [1994] NBJ No 242

<sup>4</sup> Canadian Association of Social Workers (2005). *Code of ethics*. Retrieved from [https://www.casw-acts.ca/sites/default/files/attachements/casw\\_code\\_of\\_ethics.pdf](https://www.casw-acts.ca/sites/default/files/attachements/casw_code_of_ethics.pdf)

<sup>5</sup> Scott, D. (2008). *Toolkit for primary care: Capacity assessment*. Retrieved from <https://www.nbasw-atsnb.ca/assets/Uploads/toolkit-for-primary-care-capacity-assessment.pdf>

When assessing the capacity of a minor, social workers must also factor the client's age into the capacity assessment. While age is not an indicator of capacity, often, capacity does increase with age. The younger the minor, the higher the threshold to determine capacity should be. Social workers should undertake a more in-depth assessment for younger clients, to ensure they have a complete understanding of the nature and consequences of treatment and meet the criteria of a mature minor.

### **3.2 Importance of Re-Assessing Capacity**

Capacity can change over time. As children age, their capacity also increases, and youth can make more independent decisions and express what is in their best interest. However, it must be noted that in some cases capacity may regress, due to a variety of factors such as trauma. Since age alone is not a predictor of capacity, social workers who are working with minors must continue to assess capacity throughout the social worker-client relationship.<sup>6</sup>

### **3.3 Best Interest of Child and Children's Rights as Foundation for Practice**

Children and youth have rights under Article 12 of the *Convention on the Rights of the Child*, including the right to express their views freely in all matters affecting them and for those views to be given due weight in accordance with the age and capacity of the child and youth.<sup>7</sup>

The best interest of the child is a primary principle that must inform all actions and decisions made by social workers. The NBASW Code of Ethics defines the best interest of the client as "all actions and interventions of the social worker are taken subject to the reasonable belief that the client will benefit from the actions".<sup>8</sup>

## **4.0 Consent Required for Service Provision**

Before providing social work services to minors, social workers must use professional judgment in assessing whether an individual has the ability to understand the nature and consequences of the social work services being offered and thus whether they're a mature minor with the capacity to consent to services. Please refer to section 3.1, *Assessing the Capacity of a Mature Minor*, for further information on assessment indicators and factoring age into the capacity assessment.

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<sup>6</sup> Newfoundland & Labrador College of Social Workers (2019). *Informed consent with children & youth: Practice guidelines for social work*. Retrieved from [https://nlasw.ca/sites/default/files/inline-files/Informed Consent with Children and Youth %28final%29 0.pdf](https://nlasw.ca/sites/default/files/inline-files/Informed%20Consent%20with%20Children%20and%20Youth%20-%20Final%200.pdf)

<sup>7</sup> Department of Justice Canada (2015). *Article 12 of the convention on the rights of the child and children's participatory rights in Canada*. Retrieved from <https://www.justice.gc.ca/eng/rp-pr/other-autre/article12/p2.html>

<sup>8</sup> New Brunswick Association of Social Workers (2007). *Code of ethics*. Section Definitions. Retrieved from <https://www.nbasw-atsnb.ca/assets/Uploads/Complete-Code-of-Ethics2.pdf>



Social workers responsibility to assess client capacity during the first meeting is further explained in the NBASW Code of Ethics, which states:

- 1.4.4 Social workers who have children as clients shall determine the child's capacity to consent and shall explain to the child (where appropriate), and to the child's parents or legal guardians (where appropriate) the nature of the social worker's relationship to the child and others involved in the child's care.

Consent must be sought after the initial session with the social worker if there is to be continued involvement. Social workers must be sure to document all steps that are taken and decisions that are made in the client's file.

#### **4.1 Services for Individuals Under 19 Years of Age Who Are Considered a "Mature Minor"**

If a social worker determines that a minor is mature and possesses the capacity to consent to social work services, the consent of the minor shall be the only consent required.

#### **4.2 Services for Individuals Under 19 Years of Age Who Are Not Considered a "Mature Minor"**

If a social worker determines that a minor is not mature and therefore lacks the capacity to consent to services, social workers shall seek consent from a parent or legal guardian. The NBASW Code of Ethics states:

- 1.4.8 In instances when clients lack the capacity to provide informed consent, social workers shall protect clients' interests by seeing that their interests are represented by an appropriate third party, such as a substitute decision-maker.

When working with minors who are not considered mature, parents or legal guardians are the appropriate substitute decision-makers and the consent of one parent/legal guardian is all that is required to provide social work services to a minor.<sup>9</sup> Either parent/legal guardian has that right to consent to services for their child.

If both parents/legal guardians do not agree to the minor receiving social work services, the social worker may attempt to find an agreement among both parties, if it is in the best interest of the

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<sup>9</sup> For cases where it is not possible to obtain parental/legal guardian consent for services, please refer to section 4.3 of this Standard, titled *Services for Individuals Under 19 Years of Age Who Are Not Considered a "Mature Minor" and Who Do Not Have a Legal Guardian Willing to Provide Consent*.

child. However, the social worker can go ahead with social work services if consent has been received from one parent/legal guardian.

#### **4.2.1 Parental/Legal Guardian Consent to Services**

If there are concerns about who has legal custody of the minor, social workers have the responsibility to request a legal agreement or court order to ensure the parent/guardian has the legal right to provide consent (has decision-making responsibility). In cases of joint decision-making responsibility or in cases where the parents are separated but there are no legal documents in place, the consent of only one parent or legal guardian is required.<sup>10</sup>

#### **4.3 Services for Individuals Under 19 Years of Age Who Are Not Considered a “Mature Minor” and Who Do Not Have a Legal Guardian Willing to Provide Consent**

There are individuals under 19 who lack the capacity to be considered a mature minor and who do not have a parent or legal guardian willing to provide consent for social work services. These cases can be difficult, as non-legal guardians are unable to provide consent for minors.

In a case such as this, the non-legal guardian may request the Court of Queen’s Bench appoint them as the minor’s legal guardian. They may also request that the Court provide consent for the minor to receive services under the *parens patriae* doctrine.<sup>11 12</sup>

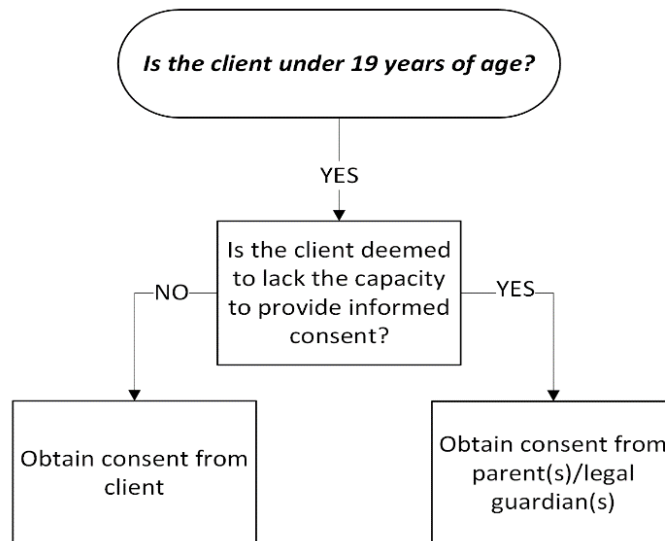
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<sup>10</sup> As per the updated *Divorce Act*, the term *custody* is replaced with the term *decision-making responsibility*. Decision-making responsibility means the responsibility for making significant decisions about a child’s well-being, including in respect of health, education, cultural, language, religion and spirituality, and significant extra-curricular activities. Retrieved from [http://www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Divorce\\_Act\\_Terms\\_EN.pdf?fbclid=IwAR10djwSmxlg6yLHJchf60HwSr97ei2yRwkJD8lfXK4qtfcYwP93p4cHOHc](http://www.legal-info-legale.nb.ca/en/uploads/file/pdfs/Divorce_Act_Terms_EN.pdf?fbclid=IwAR10djwSmxlg6yLHJchf60HwSr97ei2yRwkJD8lfXK4qtfcYwP93p4cHOHc)

<sup>11</sup> If legislation does not provide for the appointment of independent legal representation for a child, or if existing statutory requirements are not met, superior courts may resort to their *parens patriae* jurisdiction to appoint counsel for a child. This jurisdiction empowers the court to “act in the stead of a parent for the protection of a child.” Department of Justice (n.d.) *Legal representation of children in Canada*. Retrieved from <https://www.justice.gc.ca/eng/rp-pr/other-autre/lrc-rje/p3.html>

<sup>12</sup> In New Brunswick, the *Family Law Act* provides the Court the ability to appoint independent legal counsel for a child. Government of New Brunswick (2020). *Family Law Act*. Retrieved from <https://www.gnb.ca/legis/bill/FILE/60/1/Bill-6-e.htm>

**Capacity of Minors Decision-Making Tool: Social Workers Working with Minors**



**5.0 Access to Client Records**

Clients have the right to access their files, as highlighted in the section 1.3.2 of the NBASW Code of Ethics. If a minor has been deemed a mature minor and provided consent for services, they have the right to access their file, if the social worker determines it is appropriate and in the best interest of the client.

If the client is not considered a mature minor and parent(s)/legal guardian(s) provided consent for services, then the parent(s) or legal guardian(s) may access the file, if the social worker determines it is appropriate and in the best interest of the client.

If a third party (e.g., another family member, a lawyer, etc.) requests to view the file, the social workers must first request consent from the client. If the client is not a mature minor, the social worker must request consent from the parent(s)/legal guardian(s) that consented to services, before providing information.

Social workers may refuse access to a file or part of a file for just and reasonable cause. This is clarified in the NBASW Code of Ethics, which states:

- 1.6.7 Social workers shall respect clients’ right of access to their file subject to social workers’ right to refuse access for just and reasonable cause.<sup>13</sup>

Social workers must review each request to access a file and evaluate the risk to the client and to others, evaluating if its in the best interest of the client. If the social worker refuses a client

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<sup>13</sup> Social workers take due care to protect the confidences of others when providing clients with access to records. This may involve masking third party information in the record.



the right to access their file or part of their file, the social worker should inform the client and document the reason for refusal in the client's file. Social workers should also mask third party information in the file prior to providing the records to the client. If the client is not satisfied with the records, they can discuss this with the social workers supervisor or lodge a formal complaint with the NBASW.

## 6.0 Navigating Confidentiality

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.<sup>14</sup> The NBASW Code of Ethics states:

- 1.5.2 Social workers shall discuss with clients the nature of confidentiality and limitations of clients' right to confidentiality at the earliest opportunity and throughout the relationship as required, and shall review with clients when disclosure of confidential information may be legally or ethically required.

When working with a minor under 19 years of age who is not considered mature, there should be a clear understanding between the child, the parent(s)/legal guardian(s), and the social worker, at the earliest opportunity, regarding the sharing of confidential information. The NBASW Code of Ethics states:

- 1.5.6 When providing services to children, social workers shall outline for the child and the child's parents or legal guardians (where appropriate) their practices with respect to confidentiality concerning children.

Social workers may reserve the right to disclose some information received by a minor under the age of 19 years of age who is not considered mature to parent(s)/legal guardian(s), when disclosure is in the best interest of the minor.

It is recognized that, at times, it may be difficult to balance the minor's right to confidentiality and the parent's desire to know the subject matter of discussions with their child, especially when that information may be pertinent to the well-being of a minor.

Social workers may often be faced with situations when a minor asks them not to disclose certain information to their parents (e.g., that they smoke cannabis, engage in unprotected sex, binge drink with their friends on the weekend, are being bullied at school, etc.). Transparency is very

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<sup>14</sup> Newfoundland & Labrador College of Social Workers (2019). *Informed consent with children & youth: Practice guidelines for social work*. Retrieved from [https://nlasw.ca/sites/default/files/inline-files/Informed Consent with Children and Youth %28final%29 0.pdf](https://nlasw.ca/sites/default/files/inline-files/Informed%20Consent%20with%20Children%20and%20Youth%20final%200.pdf)

important in the social worker and client relationship; social workers should navigate these dilemmas with openness and honesty.

Social workers need to acknowledge the minor's concerns and attempt to reveal why they do not want their parents to know this information. Social workers should revisit how this was addressed as part of the informed consent process with the minor and their parent(s)/legal guardian(s). In addition, social workers must complete a thorough risk assessment to determine if a disclosure to a parent/legal guardian is in the best interest of the minor. Social workers must document their rationale for parental/legal guardian disclosure or non-disclosure in the client's file.<sup>15</sup>

### **6.1 Mandatory Reporting**

The NBASW Code of Ethics indicates that one of the primary professional obligations of social workers is to maintain the best interest of the client. However, as per the NBASW *Guidelines on Disclosure of Confidential Information in Situations of Potential Harm*, there may be some exceptions in which the client's wishes may be outweighed by legal requirements.<sup>16</sup> During the onset of social work services, social workers must review with clients situations where confidential information may be requested, and where disclosure of confidential information may be legally required (e.g., reporting matters such as suspected child abuse or neglect, a client who intends self-inflicted harm, a client who intends to harm another person, etc.).

## **7.0 Conclusion**

Social workers may be faced with ethical dilemmas when working with minors as it relates to informed consent, confidentiality, and decision-making. The *Standards Regarding Capacity of Minors to Consent to Social Work Services* provide a breakdown of service provision requirements for working with minors, which social workers must follow when working with minors. Social workers have an ethical responsibility to maintain and enhance their knowledge concerning informed consent and confidentiality. Using ethical decision-making tools,<sup>17</sup> having knowledge of relevant legislation, engaging in supervision and consultation, and using professional judgement will assist social workers in navigating ethical dilemmas within the context of their practice.

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<sup>15</sup> Newfoundland & Labrador College of Social Workers (2019). *Informed consent with children & youth: Practice guidelines for social work*. Retrieved from [https://nlasw.ca/sites/default/files/inline-files/Informed Consent with Children and Youth %28final%29 0.pdf](https://nlasw.ca/sites/default/files/inline-files/Informed%20Consent%20with%20Children%20and%20Youth%20-%20Final%200.pdf)

<sup>16</sup> New Brunswick Association of Social Workers (2017) *Guidelines on Disclosure of Confidential Information in Situations of Potential Harm*. Retrieved from <https://www.nbasw-atsnb.ca/assets/Uploads/Guidelines-on-Disclosure-of-Confidential-Information-in-Situations-of-Potential-Harm-Adopted-May-2017-EN.pdf>

<sup>17</sup> New Brunswick Association of Social Workers (n.d.). *Ethical decision making*. Retrieved from <https://www.nbasw-atsnb.ca/assets/Uploads/Ethical-Decision-Making-EN.pdf>