

Newfoundland & Labrador Association of
Social Workers

Neglected Adults Welfare Act – Legislative Review
Newfoundland and Labrador Association of Social Workers
Written Submission
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Newfoundland and Labrador Association of Social Workers (NLASW)

The NLASW is the professional association and regulatory body for over 1300 professional social workers in Newfoundland and Labrador. The mandate of the NLASW is to ensure excellence in social work. As a profession, social work is committed to improving the well-being of individuals, families and communities through intervention and counseling, collaboration, research, health promotion, policy and program development, and community capacity building. In Newfoundland and Labrador, the profession of social work is diverse with social workers practicing in various settings. Social workers practice within hospitals, seniors' homes, adult and youth corrections, child welfare, addictions, mental health, community based centres, government departments and universities. Social Workers are also self-employed in private practice and consulting businesses. In the pursuit of excellence in social work, the NLASW is actively engaged in social policy analysis and advocacy. In this submission, it is our intention to present the challenges and concerns experienced by social workers utilizing the Neglected Adults Welfare Act in social work practice.

Background

Newfoundland and Labrador made legislative history in 1973 when the Neglected Adults Welfare Act was enacted by the House of Assembly. This legislation was the first of its kind in Canada. Its purpose is to provide support and protection to vulnerable adults who are unable to protect themselves from abuse and neglect. In recent years, the Neglected Adults Welfare Act has received several amendments but these have not provided substantive change to this now dated legislation.

Newfoundland and Labrador has a growing population of older adults. According to the Provincial Healthy Aging Policy Framework (2007), over the last 30 years, the population of Newfoundland and Labrador has aged faster than any other province in the country. In 2007, 13.9% of the province's population was over the age of 65. Some 68, 800 seniors are among the provinces total population of 514, 000. It is estimated that by 2017, 20% of the provincial population will be 65 years of age or older. What's more, by 2017, 45% of the provincial population will be over the age of 50. According to

Statistics Canada predictions, Newfoundland and Labrador will have the highest proportion of people over the age of 65 in the country within 10 years (Aging and Seniors Division, 2006).

In addition to the aging population, the population of adults with disabilities in Newfoundland and Labrador is also growing. According to Statistics Canada (2006), the disability rate in this province steadily increased from 12.3% in 2001 to 14.9% in 2006. Meaning, of the 498, 920 people residing in Newfoundland and Labrador in 2006, 74, 510 were adults with disabilities. A contributing factor to the rising disability rate is the aging population, although it is not the only contributing factor. From this, there appears to be a strong correlation between the population of older adults and the population of adults with disabilities in the province. Together, this group provides some of the most vulnerable people living in communities throughout Newfoundland and Labrador.

Social workers recognize that as the population of older adults and adults with disabilities, specifically those with complex needs, continue to grow, the need for enhanced legislation, policies, programs and services to support this population group will also increase. Social workers who practice in health care centres, long term care facilities and community care programs are experiencing an increase in clients with complex medical, cognitive and behavioral needs that require protective and specialized care services. Legislation, policies, programs and services are needed to preserve the privacy, comfort and dignity of Newfoundlanders and Labradorians, while providing protection that is respectful and responsive to the rights and freedoms of vulnerable older adults and adults with disabilities.

Challenges and Concerns: The Social Work Perspective

In consultation with front-line social workers, five (5) key areas pertaining to the Neglected Adults Welfare Act were identified as challenges and concerns. These should be considered in the review process of the current Neglected Adults Act and in the drafting of the new Adult Support and Protection Act. These are:

- language and definitions

- rights of the client
- determination of capacity
- mandatory reporting
- resources and services

Language and Definitions

Social workers expressed concern about the language used to define the terms *abuse*, *neglect*, and *self-neglect* as presented by the Department of Health and Community Services during the consultation process. Language such as *reasonably likely*, *short period of time* and *serious* used within these definitions is thought to be vague, subjective and open to individual interpretation. The definitions given in the new legislation should be specific and provide clarity as to what is meant by abuse, neglect and self-neglect.

When describing the attributes of an adult in need of protective intervention, the term *mental incapacity* is listed as one characteristic whereby protection could be warranted. Social workers questioned what is meant by the term mental incapacity. This term requires clear definition and explanation, particularly because the issue of mental capacity addresses an individual's ability to make decisions about his/her individual health and well-being. Specifically, in instances whereby an adult may require protection due to abuse, neglect or self-neglect, that adults' ability to make decisions respecting *personal care* and *property* may come into question. Furthermore, it's important to consider the determinants of mental capacity, the process by which mental capacity is assessed when it is questioned and the role of mental capacity in decision making. Through direct client practice and professional expertise, social workers acknowledge that matters of mental capacity and decision making are extremely complex and can often be considered a grey area in practice. Therefore, it is vital that the Department of Health and Community Services carefully consider the use of the term *mental incapacity* in the new Adult Support and Protection Act and provide a clear definition and a thorough explanation of what is meant by mental capacity as it relates to supporting and protecting adults.

Rights of the Client

Social workers assert that the rights of citizens should take precedence in the creation of the new Adult Support and Protection Act. According to the Canadian Association of Social Workers (2005) Code of Ethics, social workers are "...dedicated to the welfare and self-realization of all people...and the achievement of social justice for all" (p. 3) Social workers are committed to upholding core social work values and principles, including respect for inherent dignity and worth of persons, the pursuit of social justice and service to humanity. In doing so, social workers abide by the following principles that guide ethical responsibilities to clients:

- Social workers respect the unique worth and inherent dignity of all people and uphold human rights.
- Social workers uphold each person's right to self-determination, consistent with that person's capacity and with the rights of others.
- Social workers respect the diversity among individuals in Canadian society and the right of individuals to their unique beliefs consistent with the rights of others.
- Social workers respect the client's right to make choices based on voluntary, informed consent.
- Social workers uphold the right of society to impose limitations on the self-determination of individuals, when such limitations protect individuals from self-harm and from harming others.
- Social workers uphold the right of every person to be free from violence and threat of violence. (CASW, 2005, p. 4-5).

By adhering to these principles, it is recognized that individuals have the right to live as they choose and engage in a lifestyle that may be deemed risky or eccentric. When mental capacity is demonstrated and the individual can fully understand and appreciate consequences, outcomes and risks of personal decisions to engage in such lifestyles; social workers support and advocate for the individual's right to self-determination and personal choice.

Determination of Capacity

All adults have full mental capacity unless deemed otherwise. In the event whereby an adult's mental capacity is at question, a standardized process to assess and determine mental capacity is required. Social workers acknowledge that the determination of mental capacity is complex. According to Wahl (2009), mental capacity

is a legal construct not a clinical condition. There is a continuum of capacity and decision making adding to the complexity of assessing and determining ones decisional abilities. Wahl (2009) states,

Mental capacity in law is ISSUE or TASK specific. A person is "incapable" in respect of a particular type of decision - broadly in respect to personal care or property and more specifically in respect to the types of property decisions (such as making a will, managing money, investing, etc) and the types of personal care decisions (treatment, admission to LTCF, shelter, hygiene, nutrition, safety etc). The idea is that people should NOT be labeled as globally incapable and their specific capacities to understand and appreciate should be respected so that the abilities of a person are recognized instead of labeling them by their inabilities (p. 2).

Meaning, a determination of capacity is not black or white whereby a person is deemed fully capable or fully incapable to make all decisions about their personal health and well-being. For example, there may be instances whereby a person is capable to make decisions in some areas of their life while not being able to make decisions in other areas.

Social workers expressed concern about the current process and methods used to determine mental capacity. Currently, the process to obtain a capacity assessment begins with the individuals' family physician. Next, the family physician typically refers the individual to a psychiatrist for assessment and determination of capacity. This process is not consistent throughout the province due to the unavailability of services and lack of resources. Also, the assessment may vary between physicians depending on methods used to conduct the assessment. The current process to determine capacity is not standardized. Also, the process needs to include a procedure whereby citizens can appeal or plead contest to a determination of capacity to a tribunal or board should they disagree. Standardization of process and methods would be beneficial to the citizens of Newfoundland and Labrador, ensuring respect, dignity and equality. In turn, this would aid in the social workers ability to support and protect adults as legislated in the Neglected Adults Welfare Act.

Although physicians and other medical specialists are qualified and skilled to complete assessments and make a determination of mental capacity, this skill-set is not

exclusive to medical practitioners. This area of practice falls within the scope of other allied health care professions such as social work. In other provinces, such as Ontario, interdisciplinary models are used. For example, in Ontario capacity assessments are carried out by different types of people or professionals depending on the circumstances (the circumstances and type of assessor required are clearly defined in the legislative statutes). For example, under Ontario's Health Care Consent Act, an *evaluator* may be a person who is a health practitioner or a member of the professional college for the following professions: social workers, nurses, audiologists, speech-language pathologists, occupational therapists, physiotherapists, psychologists or physicians and surgeons (Wahl, 2008. p. 3). Also, under Ontario's Substitute Decisions Act, *capacity assessors* are professionals who are specifically trained to assess capacity. There are specific qualifications required to be a certified capacity assessor, within these is the requirement of membership to a professional, regulated association or college. Of the five professions recognized as qualified to become capacity assessors, social work is one. Ontario's model is just one example whereby the assessment of mental or decisional capacity is recognized as the scope of practice within multiple disciplines.

Mandatory Reporting

Social workers are concerned about the notion of *mandatory reporting*. Social workers expressed that there is much confusion and little understanding about the practice of mandatory reporting when the suspected neglect is that of an adult. The concern of mandatory reporting is strongly linked to the previously stated concerns regarding the determination of mental capacity and the rights of the client. Current practice under the Neglected Adults Welfare Act (1973) maintains that a person who has information which leads him or her to believe that an adult is neglected shall give the information to the director (Section 4.1) regardless of the person's mental capacity. The practice of mandatory reporting despite a person's ability and right to make personal decisions on their own behalf is contrary to the social work principles of respect for the inherent dignity and worth of persons and a person's right to self-

determination consistent with the person's capacity and with the rights of others. Social workers affirm that the new Adult Support and Protection Act reflect this principle of social work practice whereby the mandatory reporting of the abuse and neglect of an adult would apply to circumstances when mental capacity is at question and/or the individual has been assessed and found to lack decisional capacity. To clarify, in cases whereby an adult has full capacity and is choosing to live a particular lifestyle, mandatory reporting should not apply in these circumstances.

Resources and Services

Social workers expressed a concern about the lack of resources and services available to meet the needs of the provinces population of older adults and adults with disabilities. Because of increased demand for limited resources and services, the current process to carry out an investigation of an alleged neglected adult is extremely lengthy and complex. Social workers stated that it may take months to years to address a concern of neglect. While doing so, often the person's physical, mental, emotional and financial health and well-being deteriorates. Social workers expressed that the current time and resources required to address a concern of neglect under the current Neglected Adults Welfare Act is unacceptable.

The current process is challenged by the demand for family physicians in the province and the lack of available services from specialists, such as geriatricians and geriatric psychiatrists and from the allied health professions, such as social work, nursing, psychology physiotherapy, occupational therapy, etc. It is recognized that there is a lack of appropriate services for seniors and adults with disabilities throughout Newfoundland and Labrador. Social workers practicing in community care programs are often seen as the "gate keepers" to access support programs and services, by being the first contact between a person and the support services they need. Social workers are concerned with the insufficient staffing complement of social work positions in community care programs. Social work positions are few, while people needing service are many. Inadequate community support programs and services can often lead to the premature admission of an older adult or an adult with a disability into a long term care

facility. This can have a devastating effect on individuals as they are separated from their families and for some, removed from their home community. According to the Provincial Healthy Aging Policy Framework, community supports are required to preserve seniors' independence (p. 24). The current process poses greater concern to those living in rural and remote communities where services are not readily available. Specifically, social workers expressed a concern for citizens residing in isolation.

Social workers expressed a concern about the fragmentation of the current service model for neglected adults. For example, within the City of St. John's, there is a designated social work position to investigate and respond to matters of adult neglect. This is not the case in other regions throughout the province whereby responding to concerns of adult neglect is managed by social workers who are administering services through other program areas. Social workers assert that an increase in resources is necessary to meet the increased demand for services by older adults and adults with disabilities.

Summary

The NLASW supports the effort by the Government of Newfoundland and Labrador to review the Neglected Adults Welfare Act (1973). This piece of legislation is outdated and it's critical that legislation, policies, programs and services are current, appropriate and change overtime to reflect the changing nature of the provinces citizenship and to effectively meet the needs of the province's population of older adults and adults with disabilities. Social workers welcome the opportunity to participate in the legislative review process as changes to the Neglected Adults Welfare Act will directly impact this area of social work practice.

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