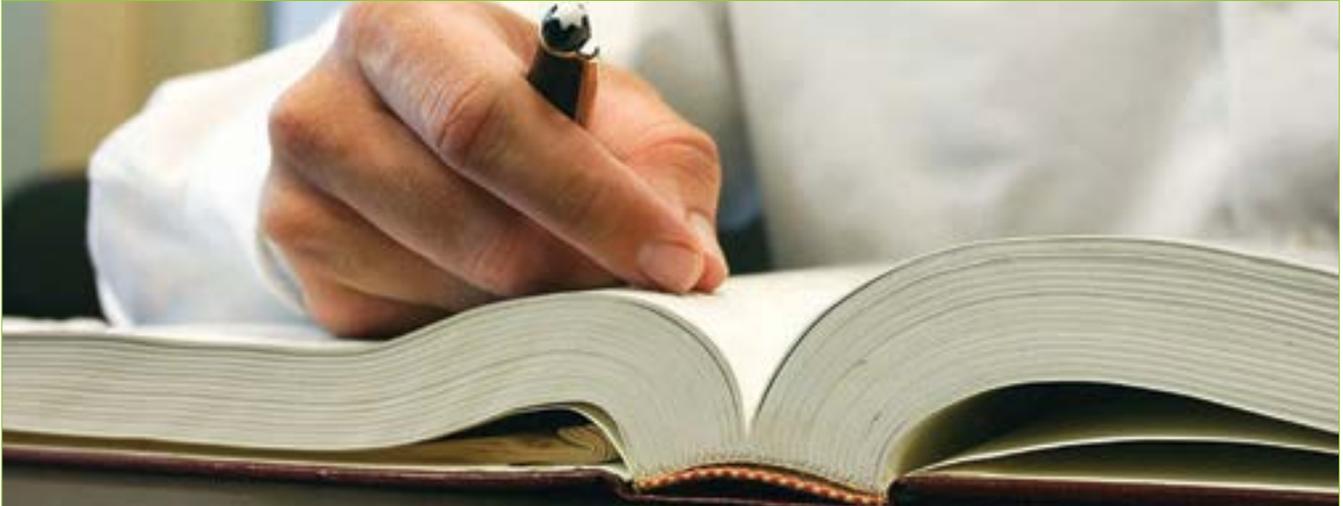

PRACTICE NOTES

WHAT'S LEGISLATION GOT TO DO WITH IT?



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Practice Notes is an educational tool designed to help Ontario social workers, social service workers, employers and members of the public gain a better understanding of recurring issues dealt with by the Professional Practice Department and the Complaints Committee that may affect everyday practice. The notes offer general guidance only and College members with specific practice inquiries should consult the College, since the relevant standards and appropriate course of action will vary depending on the situation.

Social work and social service work practice spans many diverse settings and client groups. There are variations in the approach, methodology and/or modality that members use in response to the demands of particular situations. Just as approaches vary, so does the legislation that applies to members' practice. The applicable legislation will be dependent upon, and influenced by, the workplace setting and client population served.

In the course of professional practice consultations, it has come to light that some members are not aware

of the legislation that applies to their practice, and others have not considered the impact of legislation on their practice. It is likely that most members did not enter their profession based on a desire to take a "deep dive" into legislation and the rule of law. Regardless, legislation sets out members' legal obligations as well as client rights and members' powers to act. Understanding the legislation that applies to one's practice is an essential component in providing ethical and professional client services.

Legislation provides direction on many important aspects of client services and members' professional responsibilities. Issues such as client access to records, child protection, consent, medical assistance in dying, substitute decision-making and using the title "psychotherapist" are all detailed in various pieces of legislation. *The Code of Ethics and Standards of Practice Handbook* stipulates that "College members maintain current knowledge of policies, legislation, programs and issues related to the community, its institutions and services in their areas of practice."¹ Indeed, the Standards of Practice work in tandem with applicable legislation to provide guidance to members in their practice.

As society evolves and changes, so does legislation.

This further highlights the importance of maintaining current knowledge with respect to legislation. In the past year, important updates and changes have occurred in legislation such as the *Social Work and Social Service Work Act, 1998*, the *Regulated Health Professions Act, 1991*, and the newly proclaimed *Child, Youth and Family Services Act, 2017*. These changes have had a significant impact on social work and social service work practice.

The following scenarios will highlight the importance of understanding the legislation governing members' practice and how legislation works in conjunction with the Standards of Practice. The discussion set out below is not intended to be a full consideration of the issues raised in the scenarios.

SCENARIO 1: CONSENT AND THE RECORD

A member works at a health care centre that serves children and youth with identified mental health issues. The member has been asked by a parent to provide a report to their child's school outlining the support strategies the member and the client have been working on. The parent explains that the school will be helping to monitor and address her child's behaviours. The parent also requests a copy of her child's file as she wants to better understand her child's progress and treatment. The member consulted with the College's Professional Practice Department to determine whether the member could provide a report to the child's school and a copy of the child's file to the parent.

When considering challenging practice situations, members should begin by considering how the Standards of Practice apply. Principle V: Confidentiality states that "College members comply with any applicable privacy and other legislation. College members obtain consent to the collection, use or disclosure of client information including personal information, unless otherwise permitted or required by law."² It is clear from this that the member would need to be aware of the privacy legislation that applies to her work. Additionally, it is indicated that the member must obtain consent to release client information, but from whom - the child or the parent?

The member had reviewed the [Privacy Toolkit for Social Workers and Social Service Workers: Guide to the Personal Health Information Protection Act, 2004 \(PHIPA\)](#) (PHIPA Toolkit) on the College website. The member learned that PHIPA was established to create specific rules for the collection, use and disclosure of personal health information.³ The member also learned at work that under PHIPA her employer would be considered a health information custodian and that under PHIPA, as an employee of the health care centre, the member would be considered to be an agent of the health care centre. The member was encouraged to review the PHIPA Toolkit to understand the different roles and responsibilities of a health information custodian and an agent of a health information custodian under PHIPA.⁴

The member was unsure if under PHIPA the client's parent was able to consent to have the client's personal health information disclosed to the school. The topic of consent and capacity can be confusing, even more so when the client is a child or youth. The member was aware of several pieces of legislation that address consent and capacity, including PHIPA, the *Health Care Consent Act, 1996*, and the *Substitute Decisions Act, 1992*. It was suggested that the member have a fuller conversation with her supervisor regarding which piece of legislation applied to who was able to provide consent to the release of her client's information. It was also suggested that the applicable legislation might provide guidance on such questions as:

- whether the child or youth is capable of consenting to the disclosure of personal health information about themselves
- whether a parent can provide consent to the disclosure on behalf a child or youth
- whether the child or youth's age is relevant
- whether there are circumstances where a parent cannot provide consent to the disclosure
- how would a disagreement between a child or youth and their parent about the disclosure be handled

Additionally, many organizations have created policies that outline who is able to consent to the release of files, based on the legislation governing their organization. In the absence of a workplace policy, the member may wish to obtain a consultation with the employer's legal counsel to help determine the applicable legislation regarding consent and how the legislation applies to the question of who can consent to the disclosure of personal health information about the child or youth.

With respect to the parent's request for a copy of the child's file, the member again needs to consult the Standards of Practice and the applicable legislation. The Standards of Practice state that "College members comply with the requirements regarding access to and correction of client information including personal information in a record as set out in applicable privacy and other legislation. College members employed by an organization acquire and maintain an understanding of the organization's policies regarding access to and correction of information in a record. Such policies pertain to access requests by the clients themselves."⁵ Under PHIPA, an individual has a right of access to a record of personal health information about themselves with very few exceptions.⁶ But this record contains personal health information about the child or youth. Can the parent make a request to access the record of personal health information about the child or youth on behalf of the child or youth? Is the consent of the child or youth needed before sharing the record of personal health information about the child or youth with their parent? Again it was suggested that the member have a fuller conversation with her supervisor regarding which piece of legislation applied, how the legislation applies and whether the organization has a policy regarding this matter.

From this consultation, the member concluded that she would speak to her supervisor further to determine what legislation and/or policy applied to providing consent to the release of client records and to providing a copy of the child's file to the parent.

SCENARIO 2: PSYCHOTHERAPY AND CONTROLLED ACTS

A member in private practice called the Professional Practice Department regarding comments that

a colleague had made about her practice. The member stated that she has been using the title "psychotherapist" in her practice and that she works with individuals who have serious thought and mood disorders. Some of her clients were referred to her from organizations where they had been given a mental health diagnosis, while others were self-referred and did not have a mental health diagnosis or connection with supports in the community.⁷ She stated that some of her clients greatly benefit from community support. In order for these clients to receive services, they needed to have a mental health diagnosis. Based on her assessment, the member had communicated a mental health diagnosis to the client as part of the process of obtaining the client's consent to the referral to the community support agencies. The member's colleague informed her that communication of a diagnosis was a controlled act and she was not permitted to do this. The member believed that as she had access to perform the controlled act of psychotherapy, she was also able to communicate her determination of the client's mental health diagnosis.

Professional Practice staff discussed with the member that late in 2017, provisions in the [Regulated Health Professions Act, 1991 \(RHPA\)](#)⁸ were proclaimed into force which set out the controlled act of psychotherapy and authorize College members to perform it in compliance with the [Social Work and Social Service Work Act, 1998 \(SWSSWA\)](#), its regulations and bylaws.⁹ This means that when practising psychotherapy, members must adhere to the Standards of Practice which include the requirement that "College members are responsible for being aware of the extent and parameters of their competence and their professional scope of practice and limit their practice accordingly."¹⁰ Therefore, it is a member's responsibility to determine if they are competent to provide psychotherapy. The member was directed to the [Practice Guidelines for Performing the Controlled Act of Psychotherapy](#) for more information.¹¹

The controlled act of psychotherapy became one of 14 controlled acts defined in the RHPA. A controlled act is an activity thought to have the potential of posing a risk of serious harm to clients. To protect the public, the RHPA restricts the performance of

controlled acts, in the course of providing health care services to an individual, to certain regulated professionals who are legally authorized to perform them.

Professional Practice staff explained that the controlled act of psychotherapy is the only controlled act which College members are authorized to perform. It was emphasized that College members are not authorized to perform, in the course of providing health care services to an individual, the controlled act of “communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.”

The member was surprised to learn that there are 14 controlled acts outlined in the RHPA, and that College members are only authorized to perform one of them. She stated that she would conduct her own research into the legislation to learn more. She also stated that she would obtain a legal opinion about next steps and discuss with community service providers potential different routes for client referral. It was also suggested to the member that she could incorporate this learning into her annual Continuing Competence Program learning activities.

The previous examples demonstrate the important role that legislation plays in social work and social service work practice. As stated, it is a member’s professional responsibility to be familiar with the legislation that applies to their practice. This understanding allows members to competently “provide clients with accurate and complete information regarding the extent, nature, and limitations of any services available to them.”¹²

CONSIDERING LEGISLATION

Many members find legislation intimidating, and there is no question that legislation is often lengthy and challenging to comprehend. Some members have commented that they are motivated by providing services, not researching legislation, while others state that they have heavy workloads that they feel limit the time available to familiarize themselves with legislation.

Despite these views, legislation is directly linked to providing services. In order to provide professional and ethical services, it is essential to understand the rights of clients as well as one’s legal obligations. Not adhering to legislation could put clients at risk, likely requiring corrective action and potentially aggravating already difficult situations. Becoming familiar early in their practice with the legislation that impacts a member’s practice will pay dividends later on.

Members can seek assistance in determining what legislation applies to their practice by discussing this issue with their manager or supervisor. Some members may have access to a professional practice lead, privacy office or legal counsel who could also assist. Members are encouraged to obtain a legal consultation when considering how legislation impacts challenging practice scenarios. While the College does not require members to obtain their own professional liability insurance, it strongly advises members to consider this coverage as it provides access to free legal advice, over the phone.

All Ontario legislation is available online. Members are able to search for the legislation that is applicable to their work at <https://www.ontario.ca/laws>. This website, called “e-laws,” provides useful definitions and tips for how to navigate the website and the pieces of legislation. While it is true that some pieces of legislation are lengthy, it is likely that not all of the content will apply to a member’s practice. Using the “find” function in a web browser can assist members to search for key words contained within the legislation, thereby focusing their attention on relevant issues. Legislation can be made more accessible by searching for the issues that are applicable to members’ practice.

College members are not lawyers. While being an expert on legislation is not required, understanding the legislation that impacts a member’s practice is essential. Understanding the legislation that applies to a member’s practice and clients will help to ensure that they deliver professional and ethical services.

GETTING TO KNOW YOUR LEGISLATION – CHECKLIST

- I have consulted with my manager/supervisor about the legislation that is applicable to my workplace and practice.
- I have found the legislation applicable to my practice online. (Ontario legislation can be accessed at www.e-laws.gov.on.ca)
- I have used web browsing search functions to assist me in focusing on the applicable areas in the legislation.
- I have reviewed the legislation that is applicable to my practice in general, and to this particular practice issue.
- I have obtained a legal opinion, if necessary.
- I have reviewed *The Code of Ethics and Standards of Practice Handbook* and have considered the standards and interpretations relevant to my practice.
- I have reviewed the College website to determine if there are resources that could assist me in understanding legislation, such as the [Psychotherapy webpage](#), [Practice Notes](#), [Practice Guidelines](#) or the [PHIPA Toolkit](#).

For more information about this or other practice issues, please contact the Professional Practice Department at practice@ocswssw.org

¹ The Ontario College of Social Workers and Social Service Workers (OCSWSSW), *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, Interpretation 2.1.3.

² OCSWSSW, *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle V: Confidentiality, Interpretation 5.1.

³ OCSWSSW, *Privacy Toolkit for Social Workers and Social Service Workers: Guide to the Personal Health Information Protection Act, 2004 (PHIPA)*, page 8.

⁴ *Ibid*, pages 14 – 21.

⁵ OCSWSSW, *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle IV: The Social Work and Social Service Work Record, Interpretation 4.3.1.

⁶ *Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A*

⁷ In this issue of Practice Notes, mental health diagnosis refers to a DSM diagnosis. It does not refer to a social work diagnosis. The Glossary of *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008* states that “[A] social work diagnosis defines that series of judgments made by a social worker based on social work knowledge and skills in regard to individuals, couples, families and groups. These judgements: a) serve as the basis of actions to be taken or not taken in a case for which the social worker has assumed professional responsibility and b) are based on the Social Work Code of Ethics and Standards of Practice. Such judgments and the procedures and actions leading from them are matters for which the social worker expects to be accountable.”

⁸ *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*. In addition, as explained in footnote 7, making a mental health diagnosis (i.e. a DSM diagnosis) is not the same as making a social work diagnosis and is not within the scope of social work practice. While social workers are not authorized under the *Regulated Health Professions Act, 1991*, in the course of providing health care services to an individual, to “communicat[e] to the individual or his or her personal representative a diagnosis identifying a disease or disorder...”, the *Social Work and Social Service Work Act, 1998 (SWSSWA)*, regulations and bylaws (including the Standards of Practice) impose further restrictions on the ability to make or communicate a diagnosis, since social workers must be aware of the parameters of their competence and their professional scope of practice and limit their practice accordingly.

⁹ At the same time, provisions in the SWSSWA were proclaimed into force that permit College members who are authorized to perform the controlled act of psychotherapy to use the title “psychotherapist,” in compliance with certain conditions. See *Social Work and Social Service Work Act, 1998, S.O. 1998, c. 31, s. 47.2*

¹⁰ OCSWSSW, *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle II: Competence and Integrity, Interpretation 2.1.1.

¹¹ *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*.

¹² OCSWSSW, *The Code of Ethics and Standards of Practice Handbook, Second Edition, 2008*, Principle III: Responsibility to Clients, Interpretation 3.1.