

# Literature Review

## Professional Standards and Guidelines Regarding Sexual Misconduct by Social Workers



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### *Who We Are*

The Nova Scotia College of Social Workers (NSCSW) exists to serve and protect Nova Scotians by effectively regulating the profession of social work. We work in solidarity with Nova Scotians to advocate for policies that improve social conditions, challenge injustice and value diversity. Learn more about the College at [nscsw.org/about](https://nscsw.org/about).

### *Land Acknowledgement*

*The NSCSW is in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. This territory is covered by the "Treaties of Peace and Friendship" which Mi'kmaq and Wolastoqiyik (Maliseet) people first signed with the British Crown in 1725. The treaties did not deal with surrender of lands and resources but in fact recognized Mi'kmaq and Wolastoqiyik title and established the rules for what was to be an ongoing relationship between nations.*

*All people in Canada have treaty rights and responsibilities. Those who have settler, arrivant and refugee origins are challenged to collectively work towards reconciliation with Indigenous peoples and communities. Even as we reckon with our profession's role in residential schools and other colonial projects designed to displace, dispossess and disempower Indigenous peoples, social workers are also embedded in communities that are grappling with their own roles in the great and necessary labour of reconciliation.*

*As many Nova Scotian communities struggle through conflict and crisis — worsened by the intersections of a pandemic, economic uncertainty, and racism — we encourage all to approach this work with a trauma-informed lens and to draw on the resources available to use.*

### *Acknowledgements*

The NSCSW would like to thank Megan Johnson, who conducted this review as part of a student placement while pursuing a Bachelor of Social Work degree.

## Introduction

The primary obligation of the Nova Scotia College of Social Workers is to regulate the social work profession in Nova Scotia and to serve the public interest. We establish, maintain, and regulate standards of professional practice to ensure Nova Scotians receive the services of skilled and competent social workers who are knowledgeable, ethical, qualified, and accountable to the people who receive social work.

The public and the profession are entitled to clarity regarding how sexual misconduct is being defined by NSCSW, how complaints are being investigated, and what the consequences of a substantiated sexual misconduct claim will be. Incorporating Standards of Practice regarding sexual misconduct into our policies and guidelines allows us to provide structure for the governance, discipline, and accountability for the professionals who are practicing social work in Nova Scotia (Alam, Klemensberg, Griesman, & Bell, 2011).

The NSCSW has clear Standards of Practice that prohibit social workers from having sexual or romantic relationships with their clients. However, having a developed guideline providing clear definitions of what is sexual misconduct and what the process is for investigating these types of allegations will enhance both the social worker's and the public's knowledge.

This literature review will examine what other professional regulatory bodies' sexual misconduct policies/guidelines entail, the definitions they use, and the outcomes for when an allegation of sexual misconduct is substantiated within their professional practice. The central questions are:

- **How is sexual misconduct defined?**
- **What is the process for investigating a sexual misconduct claim?**
- **What are the consequences for a substantiated sexual misconduct claim?**

In response to these questions, a review of literature was conducted to examine how other organizations (regulators, professional associations and employers for social workers and health professionals) describe sexual misconduct, what context is considered when investigating a sexual misconduct claim against a professional, as well as what are the consequences for a substantiated sexual misconduct claim. The review of literature further looked at the meaning, purpose, and effectiveness of incorporating sexual misconduct within policies and legislation. This report will be presented in four sections:

1. Search Methodology
2. Sexual Misconduct: Definitions, Purposes, and Principles
3. Disclosures of Sexual Misconduct
4. Next Steps for NSCSW

Findings from this review will assist the NSCSW in the delivery of effectively implementing a sexual misconduct guideline in order to help social workers provide competent social services to the public and protect future service users from harm.

## Search Methodology

Using Google Scholar and other online sources, data was collected from scholarly materials such as journal articles, reports of standards of practices that are connected to a variety of health professions, a number of health professional's code of ethics, main websites for fellow colleges of social workers and other health careers in Canada and an online training seminar that is presented by the Nova Scotia Sexual Violence Strategy. Keywords used for the searches are sexual misconduct, sexual abuse, sexual harassment, sexual violence, dual relationships, sexual contact and sexual assault. Materials were selected based on relevance to the research topic.

Thus, the purpose of this report is to present existing literature on sexual misconduct policies and legislations, the process of investigating a sexual misconduct complaint, and the sanctions of a substantiated sexual misconduct claim, which will help develop an approach for creating a sexual misconduct policy for the NSCSW.

## Sexual Misconduct: Definitions, Purposes, and Principles

Sexual misconduct is a well-known term that is connected to many definitions from various professions. As a result, sexual misconduct has been associated with policies and legislations within professions and varied in the ways it is described.

Sexual misconduct is generally stated as sexual misconduct, sexual abuse, sexual harassment, sexual contact, sexual violence, dual relationships, and sexual assault. For the purpose of this paper, these terms will be used interchangeably to include all the forms of sexual misconduct that is inserted within health profession's policies, legislations and practices.

The Nova Scotia Sexual Violence Strategy group shows us that sexual violence is revolved around power and control and is a threat that is directed at certain groups over others. For instance, sexual violence is most commonly experienced by women, and individuals who identify as transgender, non-conforming, non-binary and two-spirit. There are also high rates of sexual violence among children, racialized and Indigenous women, women with disabilities, low-income women, women with housing insecurity, sex workers and women living with addictions (Break the Silence, 2020).

### *Nova Scotia College of Social Workers*

Although a policy on sexual misconduct is absent from the NSCSW Standards of Practice, the Standards asserts that under no circumstances should a social worker engage in or ask for sexual contact with the client. *Sexual contact* is described as interactions performed by either a social worker or the client, that include but are not limited to sexual intercourse; genital to genital or anal; cunnilingus; fellatio; or the fondling of breast, genital areas, buttocks, or thighs either clothed or unclothed. Social workers must not engage in verbal or physical behaviour with a client that may or will be perceived as sexually demeaning or seductive.

The clients referred to are both current and former ones. At no point should a social worker engage in or request sexual contact with a client when it would be determined to be exploitative, abusive, or detrimental to the client's well-being. Social workers are also not to participate in sexual activities with clients' relatives or those who have a close relationship with their client when there is potential that this could harm (NSCSW Standards of Practice, 2017).

### *Ontario College of Social Workers and Social Service Workers*

For the Ontario College of Social Workers and Social Service Workers (OCSWSSW) sexual misconduct policy is stated within their Code of Ethics and Standards of Practice (2018). In this source, *sexual misconduct* is defined as a social worker engaging in sexual intercourse or other forms of physical sexual relations with their service users. Sexual misconduct also includes the touching in a sexual manner of the client performed by the social worker, as well as the behaviour or comments that contain a sexual nature and are directed at the client from the social worker and it is not relevant to the services being provided. The OCSWSSW state that this type of behaviour enforced by the social worker represents an abuse of power in the pre-established professional relationship, because the social workers are in a position of authority compared to the client. Social workers that are members of the OCSWSSW are prohibited from having sexual relations with an individual where it can create and cause a conflict of interest for the professional relationship. Members of the OCSWSSW are not to engage in actions of a sexual nature with clients (OCSWSSW Code of Ethics and Standards of Practice, 2018).

Within another document, the Professional Misconduct Regulation (2017), the OCSWSSW switches to using the term *sexual abuse* to describe these motives done by a social worker. What the Professional Misconduct Regulation defines as sexual abuse is when a social worker who is a member of the college engages in sexual intercourse or other forms of sexual physical behaviours between themselves and a client. It also refers to the social worker touching the client in a sexual manner and initiating behaviours or remarks with them that are of a sexual manner and are not appropriate regarding the service being provided (OCSWSSW, 2017).

### *Alberta College of Social Workers*

Within the Alberta College of Social Workers (ACSW) when examining professional boundaries for the social worker in policies they use the terms *sexual abuse* and *sexual misconduct*. ACSW refers to the Health Professions Association's (HPA) acknowledgement of these terms to help assist them in both their definitions.

The phrase *sexual abuse* is defined as sexual intercourse; genital to genital, oral to genital, anal to genital, or oral to anal touching between the social worker and client; the masturbation of social worker while in the presence of client; masturbation of client performed by a social worker; the social worker encouraging the client to masturbate in their presence; and the social worker touching the patient's genital, anus, breasts or buttocks in a sexual manner. When defining *sexual misconduct*, the ACSW and HPA state that it is a one time or reoccurring incident of objectionable conduct, behavior or remarks in a sexual manner by the social worker towards the client, in which the social worker would know or ought to have known that these

actions could or will cause offend or humiliate the client. This therefore is harming the client's health and well-being (ACSW, Standards of Practice, 2019).

It is clear that the ACSW differs from the other three listed definitions of sexual misconduct, as the ACSW distinguishes sexual misconduct apart from sexual interactions and gestures. In this description sexual misconduct does not refer to physical activity but instead written or verbal actions implying sexual content.

### *Canadian Association of Social Workers*

In their Guidelines to Ethical Practice (2005), the Canadian Association of Social Workers (CASW) discusses the possible harmful outcomes of dual relationships that are apparent between social workers and their clients. Dual relationships are established when social workers relate to their client in more ways than just the professional relationships. Although not all dual relationships are harmful there some that can be, such as ones that resemble a romantic or sexual relationship between the two. In regards to dual relationships, the social worker is responsible to examine the nature of the relationship to determine whether they are in a position of power or authority, which could potentially negatively affect the actions and decisions for their client (CASW, Guidelines to Ethical Practice, 2005).

The CASW document also expresses that social workers are to avoid physical contact with clients. If this is not possible, the social workers have a responsibility to establish clear, appropriate and culturally sensitive guidelines for the respect of the professional relationship.

Another notion that the CASW's guideline states is that social workers are not to engage in romantic or sexual relationships or sexual contact with clients even if the client consents. On top of dual relationships and physical contact, the term sexual harassment is discussed in this document stating that sexual harassment is not to be acceptable social work behaviour. Sexual harassment is outlined by the CASW as unwelcomed sexual comment or advances, request for sexual favours and interactions that resemble a context of sexual nature which could potentially offend and harm the public (CASW, Guidelines to Ethical Practice, 2005).

### *Association of Social Work Boards*

An American non-profit organization, the Association of Social Work Boards (ASWB) is composed of boards and colleges of all the 50 United States and all of the Canadian provinces. It is the only non-profit organization that dedicates its work to the service and support of social work regulation, and it offers a practice act model so that other regulatory bodies can use it as a reference when they are developing their own set of policies.

In its standards of practice legislation, the ASWB refers to the term *sexual contact* when discussing unprofessional boundaries between social workers and their clients. In section V of their standards of practice, they discuss sexual contact regarding social workers forming personal relationships with clients. Sexual contact in this sense is defined as sexual intercourse that is either genital or anal; the handling of the breasts, genital areas, buttocks or thighs; and electronic exploitation. The ASWB asserts that sexual contact with a current and former client will not be tolerated. A social worker is not to engage in or request sexual contact or participate

in behavior that is verbally or physically sexually seductive or sexually demeaning with their client under any circumstances.

The ABSW goes on further to say that social workers are not to engage in dual relationships with clients when it will affect the client's well-being, impair their professional judgments in practice or increase the client's risk to exploitation. When dual relationships cannot be avoided though the social worker is responsible for taking appropriate actions in order to ensure that a second relationship will not interfere with the professional one. Ways this can be achieved is through consultation, supervision or informed consent. The ABSW believes that a dual relationship with a former client is acceptable but even after the professional services have been completed the relationship cannot be one that is sexual.

### *Nova Scotia College of Nurses*

Like social work colleges, the colleges of other health professions have taken initiative to integrate sexual misconduct into their policies. For instance, the Nova Scotia College of Nurses (NSCN) does not condone sexual misconduct and has created a standards of practice document that is directed just towards sexual misconduct. This resource was established in order for the NSCN to best serve their patients.

The NSCN defines *sexual misconduct* as, sexual, seductive or sexually demeaning behaviour made either in-person or through written or electronic sources by a nurse that is directed towards a client through physical, verbal or non-verbal ways. The NSCN states that in regard to sexual misconduct a client is someone that is currently seeking services, has done so previously or is considered a vulnerable patient. NSCN also identifies that colleagues who do not consent may also be targets of sexual misconduct. Non-vulnerable patients who are seen in episodic settings are exempt from being distinguished as current clients because the nurse and client relationship may be short and limited (NSCN Sexual Misconduct Standard of Practice, 2020).

This document states that there are a variety of behaviours associated with sexual misconduct such as failing to give the client privacy to undress or dress when the nurse is not medically needed to be a part of the process, a nurse sexually abusing a client or colleague, ending a professional nurse and client relationship for the purpose of entering another relationship that is sexual, touching a client that is in a sexual manner, discussing the nurses sexual preferences and past sexual history plus many more. The NSCN states that these professional boundaries between a nurse and their patient must be respected and enforced by the nurse due to the power difference between the two. Failing to comply to this policy is a violation of professional boundaries with the nurse and client relationship.

Due to the type of care that a nurse may be medically required to do with a client, it is important to distinguish what actions are not classified as sexual misconduct in order to protect the nurse's professional practice and the patient's well-being. For instance, when it is medically relevant conduct, behaviour, and comments that have a sexual nature are not considered sexual misconduct. This description includes the touching of patient's genitals, breasts and anus as the touching is required for a medical physical assessment. When these type of actions or



discussions are clinical required to take place, the nurse and patient must both understand the importance of these actions and the patient must give informed consent prior to a nurse performing any service on them (NSCN Sexual Misconduct Standards of Practice, 2020).

### *College of Physicians and Surgeons of Nova Scotia*

Within the College of Physicians and Surgeons of Nova Scotia (CPSNS), they also have a document that is directed specifically at the sexual misconduct of a physician. This is referred to as the Professional Standards and Guidelines Regarding Sexual Misconduct by Physicians (CPSNS, 2016). In this source they define sexual misconduct as any sexualized act that is performed by a physician with a current patient. These acts include sexualized comments or questions that are not needed for the medical assessment, when a physician threatens or attempts to engage in sexual contact with patient, sexual touching of any kind, procedures or exams that are intimate but contain no medical relevance, sexual abuse and lastly a physician persuading a client to engage with them in a sexual manner. With this term of sexual misconduct, the guideline goes on to further state that the term sexual abuse describes sexual intercourse with a physician and patient, physician masturbating patient or physician masturbating in presence of patient, and if the physician encourages the patient to masturbate while in their company. The guideline also introduces the term *sexual conduct*, which is coined as threatened, attempted or actual conduct behavior or words made by a physician to a patient that contain a sexual character and are not medically relevant for the procedure or examination (CPSNS, 2016).

In their guidelines of sexual misconduct, the *patient* is defined as one who is receiving services from physicians in that present moment. CPSNS states that the patient in this context is not seen as those who previously received medical services from the physician at hand, unless the former patient is someone who is deemed vulnerable. This college goes on to say that a vulnerable patient is an individual whose services received required a lengthy amount of time and energy, causing the patient to be seen to be dependent on the physician's services, or patients that received psychotherapy services regardless of the time that has passed since this person acquired the help. But in this guideline, a physician who engages in sexual acts or a sexual relationship with an individual who is a former non-vulnerable client after they have terminated the physician-patient relationship, then these acts are not viewed as inappropriate (College of Physicians, 2016).

The standards and guidelines of sexual misconduct for CPSNS differ from the previous sources this literature review has already examined, since sexual relationships with some former clients may be acceptable.

### *College of Physicians and Surgeons of Ontario*

In their article, "Sexual Abuse by Health Care Professionals: The Failure of Reform in Ontario", Sandra Rogers (2004) examines the documentation of sexual abuse by a doctor towards a patient through the College of Physicians and Surgeons of Ontario (CPSO). The reports states, recently this unethical behaviour of health care professionals has been gaining more attention, especially in regard to cases of sexual violence against women. Past studies have shown that

when looking at patients or health care students, those who are more likely to be sexually violated by a doctor are women and the perpetrators overwhelmingly tend to be men (Rogers, 2004).

In 1991, the CPSO created a task force was established in a response to a number of complaints from the public made against the CPSO and how they respond to patient complaints. The task force was also used to look at the penalties imposed on these health care professionals who were found guilty of this professional misconduct. The task force found that between 1987 to 1991, the CPSO received a total of 150 complaints for sexual abuse of a doctor against a patient. Between 1994 and 1998 though the number of complaints received from survivors raised to 661. The task force noted that with taking into account of under reporting of sexual abuse within a physician and patient relationship, around 200,000 men and women in Ontario experienced sexual abuse by a health care professional during the time frame of 1993 to 1998 (Rogers, 2004).

Due to these findings, the task force began to create a pathway for the CPSO to assemble a policy that enforced that they had zero tolerance for client sexual abuse by a health care worker. This developed into the Health Professions Act in 1991 which recommend that a physician lose their license for a minimum of five years when they are found to be guilty of sexual misconduct. It also stated that all physicians and surgeons be under an oath to report any sexual abuse by a colleague that they become aware of (Rogers, 2004). Due to the clear power imbalance, the Health Professions Act stats that consent can never be freely given by the patient because they are in a non-dominant position with the physician or surgeon. The Act also stated that no type of sexual acts or relationships between physician and patients is acceptable, and it will always be seen as sexual abuse. Within this policy, *patient* refers to people that would be currently seeking services from the health care professionals, former patients within the past two years, patients that received services for psychological reasons at any given time and patients that come to the physician's or surgeons' services in an emergency room or rural areas (Rogers, 2004).

### *Nova Scotia Health*

Nova Scotia Health (NSH) has created a document regarding their code of conduct. This code of conduct introduces principles that hold those working within the NSH to a certain level of respectful, ethical and professional behaviors. The code of conduct states that this source is applicable to all working within NSH which includes not just health care providers but also other employees, volunteers, board members, contractors and learners. This code of conduct goes even further to also be directed towards patients, family members and any visitors that are present in an NSH facility. The code of conduct is put in place to ensure the NSH has a respectful atmosphere and all individuals are treated and also treat others with respect and dignity (NSH Code of Conduct). An expectation for the individuals listed above is that interaction is to be without any abuse, harassment, discrimination, aggression or violence. It is also an expectation that when notified by it, a person must report an inappropriate or unprofessional behaviour or conduct (NSH Code of Conduct).

### *Izaak Walton Killam Health Center*

When looking at health professions that provide services for youth, it becomes apparent that claims of sexual misconduct have more steps and punishments connected to them as it also becomes a matter with the law. A policy and protocol of the IWK Health Center located in Nova Scotia is titled as, “Reporting Allegations of Abuse/Neglect or Suspected Abuse/Neglect” (IWK, 2016). Within this policy it states that anyone – whether their position is an IWK employee, medical staff, volunteer or a person acting on behalf of the IWK – is required to report any knowledge or beliefs they have pertaining to a client who is being or is likely to be abused/neglected. The obligation to report must be taken seriously regardless of whether the abuse/neglect has taken place on or off of IWK property from a person that is offering the client services, another client or a person from outside of the IWK Health Center. The policy also states that if a health care professional employed with the IWK is acting in accordance with their professional standards and practices, then abuse between them and client should not occur (IWK, 2016).

### *Analysis*

The review revealed important definitions, principles and attributes of sexual misconduct policies and legislations that are enforced to reduce the possibility of harm being done to a client. It is clear from the review that guidelines and design of sexual misconduct policies are also informed by a desire to improve professional practice. This view aligns with McNair, Fantasia, and Harris (2018) in their look at sexual misconduct policies in universities. McNair *et al.* (2018) state that having clear policies of sexual misconduct is imperative as it protects survivors and holds those accountable for unethical behaviour. Based on these purposes, the features of sexual misconduct policy for the NSCSW must be designed to address these two key areas, i.e. improved practice and protection of service users.

## Disclosures of Sexual Misconduct

Along with disciplinary actions set in place, it is also important to highlight the effects sexual misconduct complaints can have on the survivors and how to go about assisting the victim’s healing process. The Nova Scotia Sexual Violence Strategy (2020) offers online training for learning how to support an individual who has survived sexual violence. An area of this training focuses on how to respond to someone’s disclosure of their sexual violence experience.

It is important to first mention that a disclosure differs from reporting an act of sexual violence, as a disclosure is not an official reporting to the authorities but rather a telling of the situation. When responding to another’s disclosure of their experience with sexual violence, the NS Sexual Violence Strategy states that in order to restore the person’s choice and power, it is important to allow the victim to control all the decision being made related to their survival, coping and recovery process. It is all crucial to invite the person to freely express their thoughts and feelings, offer non-judgmental responses and work together as ways to further restore the victim’s choices and encourage empowerment. When being involved in a disclosure you are to support the victim and the decisions they make, validate their feelings, believe what they are

stating, reassure them, which will all help build a safe and trusting relationship between the listener and the victim (Break the Silence, 2020).

When an individual discloses their survival of sexual violence to another, this person must determine whether the victim is feeling safe. They can begin by asking them if they have any immediate dangers in their lives, and if so, seek if it is crucial to remove them from that situation. After being subjected to sexual violence, a survivor may be in need of company or prefer solitude, so when offering support it is essential to respect this person's boundaries and listen to what they're comfortable with (Break the Silence, 2020).

For survivors who choose to seek medical attention, they can go through the process in a number of ways. For instance, a survivor can report the sexual violence inflicted on them to the police and receive a medical exam plus a forensic exam for evidence. They can also choose to not report to the police but still have both of these exams completed to put the evidence on hold for six months while the survivor determines whether they want to report the act or not. Survivors can disclose to medical staff and just receive a medical exam or lastly, the survivor may choose to not disclose the experience at all but just have a medical exam carried out to determine any immediate care needed for their physical needs. When accessing medical attention and services, the victim has the option to bring a support person if they wish to do so (Break the Silence, 2020).

According to Canadian law, a perpetrator accused of sexual violence is not able to claim during the investigation process that they had consent, if in the situation intoxication was present during the act, the perpetrator was reckless when determining whether they had consent, they ignored cues that they did not receive consent, or they didn't take proper step to ensure the actions were consensual. These laws are implemented to deter a judge from accepting any arguments made by the perpetrator that they believed they had consent even though these factors are apparent in the matter (Break the Silence, 2020).

The NS Sexual Violence Strategy's training concludes by examining culturally appropriate ways to respond to a disclosure of sexual violence. It claims that culturally appropriate services for African Nova Scotian survivors of sexual violence may incorporate the seven values of African culture, in order to provide them with interventions that are culturally relevant to their identity. For a survivor of sexual violence who identifies as Indigenous, it may be helpful for this person to seek reliance from sexual violence initiatives present in Indigenous communities. This is recommended in order for the victim to receive safe and culturally relevant approaches to addressing their sexual violence experience. Some Indigenous pathways for healing after surviving sexual violence may be the survivor talking to an elder in their community since they can offer them with traditional and spiritual practices and supports. An Indigenous victim may also turn towards the medicine wheel or the seven sacred teachings as intervention strategies when addressing the harm done to them by sexual violence (Break the Silence, 2020).

## Next Steps for NSCSW

The notion that sexual misconduct policies and guidelines entail a combination of rules for professional boundaries, a reduction of public harm, and sanctions has significant implications

for the NSCSW. These implications are that the College needs to build upon the Standards of Practice and establish guidelines regarding sexual misconduct that include the sanction that will result from such conduct. Such a shift would mean promoting the College's definition of sexual misconduct. It would also involve developing sanctions that will routinely be placed upon the College's members who engage in acts of sexual misconduct listed in this definition.

The NSCSW needs to expand their policies regarding sexual misconduct, to gain an enhanced understanding of what is defined as sexual misconduct, and the sanctions that are connected to sexual misconduct in practice. There is also a need for continuous assessment of the members' general understanding of the term and their understanding of its connection to professional boundaries in order to eliminate its appearance in social work practice. Additionally, the NSCSW needs to develop sanctions for when a social worker is found to have committed sexual misconduct. The sanctions must be inserted into the College's policies in order for them to be referred to and enforced during cases when these complaints are made against a social worker. A set of pre-established sanctions would benefit the College because when a member is found to have engaged in sexual misconduct with a client, the College will already have the steps put in place as to what punishments the social worker plus their license will be subject to.

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