



Regulation: Things to consider After a Criminal Law Changes

The Canadian (British Columbia) Experience

Registration & Complaints

What happens when an applicant for Registration has a criminal conviction?

What happens when a Registrant is charged or convicted of a crime?

Registration

- According to the SWA s. 13(1) the Registrar must Register anyone who applies, satisfies the Registrar that he or she is qualified, and pays the fees.
- To be qualified requires meeting standards for registration that have been approved by the Board
- However, according to 13(2) there are some exceptions which allow the Registrar to refuse registration. One of these is when the applicant has been charged with an “Indictable offense”.
- The Registrar is required to provide the reason that Registration was denied.
- The Registrant has the right to appeal that decision to the board registration committee.

Complaints

- If a registered social worker is convicted of a criminal offense, then this often would come to our attention as a complaint.
- If so, we would investigate the complaint.
- Each case would be treated on a case-by-case basis.

Registration & Complaints

Social Workers Act

Board of Directors

- Elected by Registrants (at least four) + at least two public appointees
- Set standards for registration, and quality assurance
- The Act requires the Board to establish committees made up of board members and nonelected registrants. Examples: Quality Assurance, Registration, Inquiry and Discipline
- The Inquiry Committee determines whether complaints should be referred to discipline or resolved by other means allowed under the Act

Registrar

- Oversees the registration process and ensures that decisions comply with requirements under the Act and standards set by the Board.
- Provides an initial review of complaints, and oversees the investigations once approved by the inquiry committee.
- Supervises staff who are responsible for providing practice consultation and practice guidance to Registrants who have questions about practice standards or ethics.

Complaints

Process is set out in the Social Workers Act

First: The Registrar reviews the complaint to ensure that we have jurisdiction, and she can dismiss complaints that we do not have jurisdiction to investigate and can dismiss on other narrow grounds described in the SWA

Second: If not dismissed, it is referred to the Board Inquiry Committee who authorizes an investigation

Third: An investigation report and (sometimes) a recommendation is provided to the Inquiry Committee by staff

Fourth: The Inquiry committee may decide to dismiss the complaint, send it to discipline, or to resolve it through a Complaints Resolution Agreement. Through a CRA the Registrant can voluntarily agree to take training, to restrict his or her practice, or to take other measures.

If the complaint is made because the Registrant has been charged with or convicted of a crime, we would investigate following the same procedures as in other cases. It would be considered on a case-by-case basis. If the crime is very serious, or directly related to the social worker's practice, we would prioritize the case.

As well, The Social Workers Act (s. 29) allows the BC College of Social Workers to place restrictions on a Registrant's practice or to remove Registration in situations where it is necessary to protect the public while the investigation is proceeding.

In British Columbia

Registered Social Workers and Registered Social Worker employers have the duty to report conduct of a registered social worker who they have reason to believe, in the course of practising social work, is causing or has caused physical or significant emotional harm to or is or has engaged in sexual abuse or sexual exploitation of a client.

What Happens When the Law Changes?

In Canada the *Criminal Code* is a federal statute that applies across the country. There have been two very significant changes to the Criminal Code in the past four years.

What impact have these changes had on the social work profession and social work regulation?

- 1) Legalization of Marijuana
- 2) Decriminalization of Assisted Suicide (if specific criteria are met)

Legalization of Marijuana – The History

On October 17, 2018, recreational marijuana use became legal in Canada. Canada was the second country to legalize marijuana nationwide.

There are restrictions:

- This law is for recreational drug use only. Persons cannot have more than 30 grams in their possession
- Having more than 30 grams can lead to a charge of trafficking
- Purchasing marijuana from a non-licensed source can lead to prosecution
- Selling marijuana to a minor is illegal
- Driving under the influence of marijuana could lead to a fine

Legalization of Marijuana – Impact on Regulation

What if a social worker wants to register but was convicted for possession of marijuana in a charge that pre-dates the change in law?

- Marijuana possession was not an indictable offense before the law changed. According to the Social Workers Act, the Registrar may refuse registration for applicants that have been charged with an indictable offense. So a charge of possession would not prevent registration.

If the applicant has been convicted of trafficking, or other marijuana-related indictable criminal offenses, this would be grounds for denying registration.

Now that the law has changed, there will be no complaints that a social worker has been charged with the crime of possession of a small amount of marijuana. However, we still may receive complaints of:

- Criminal charges for other marijuana related offenses (trafficking, driving under the influence)
- Employer complaints that the social worker is inappropriately using marijuana at work
- Etc.

We would investigate these on a case-by-case basis.

Change in the Law - Assisted Suicide: History

In the Supreme Court of Canada case of Carter v Canada (2015), the court found that the Criminal Code prohibition against assisted suicide violated s. 7 rights under the Charter of Rights and Freedoms. The Supreme Court gave Parliament one year to introduce a new law that did not breach s. 7 rights.

The federal government responded by passing an exception to the prohibition against assisted suicide in cases where:

- the person is at least 18 years old and mentally competent
- has a grievous and irremediable medical condition
- makes a voluntary request for medical assistance in dying that is not the result of outside pressure or influence
- gives informed consent to receive medical assistance in dying

This is called Medical Assistance in Dying (MAID). Only a nurse or a doctor is permitted to administer a drug or provide a prescription to the person who wants MAID

https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2016_3/FullText.html

Assisted Suicide: Impact on Regulation

Now that this option exists, social workers may have clients that ask them to provide information about the MAID option. A social worker is protected under the new law (which provides an exception to the Criminal Code offense of assisting suicide under MAID). The relevant provision is:

“no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying”

Assisted Suicide: Impact on Regulation

As long as social workers are well informed about this change in law, and about the circumstances in which they are permitted to provide information about MAID, this change in law should not lead to complaints against social workers, and it has no impact on registration.

However, it is very important that social workers understand the change in law, have opportunities to discuss any practice questions that arise, and can discuss any ethical concerns they have. In order to assist our Registrants with these matters, we have provided practice consultations to Registrants and have developed guidelines. Similar work has been done by the other Regulatory Colleges in Canada.

Canadian Association of Social Workers has a hub of resources for social workers, including documents prepared by social work regulatory bodies across Canada.

<https://www.casw-acts.ca/en/resources/medical-assistance-dying-resource-hub>



Questions?

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