

Chapter 5

Legislation: The Client's Rights and Your Rights

Introduction

- The foundation of good client–worker relations is understanding:
 - Support worker rights
 - The client’s rights
 - Legal responsibility
- How you relate to the client depends on:
 - Your professional code of ethics
 - Your employer’s policies
 - Federal and provincial or territorial laws

Client Rights and Boundaries

(1 of 2)

- *Ethics* is concerned with what you should or should not do.
- *Legislation* is a body of law that governs the behaviour of a country's residents.
 - Legislation tells members of society what they can and cannot do.
 - Makes sure that all clients receive safe and skillful care.
 - Protects clients' privacy.
- Courts protect clients' and support workers' rights.

Client Rights and Boundaries

(2 of 2)

- A *right* is something to which a person is justly entitled.
 - *Moral rights* are based on a sense of fairness or ethics.
 - *Legal rights* are based on rules and principles outlined in the law and enforced by society.

Canadian Charter of Rights and Freedoms

- This is federal legislation that applies to all Canadians, regardless of where they live in Canada.
- It lists the basic rights and freedoms to which all Canadians are entitled:
 - The right to equality without discrimination based on race, ethnic origin, colour, religion, sex, age, or mental or physical disability
 - See other basic rights and freedoms

Basic Rights of People Receiving Health Services (1 of 2)

- The *Human Rights Act* is provincial and territorial legislation that is based on the *Canadian Human Rights Act*
 - Its purpose:
 - Prevent discrimination
 - Promote and advance human rights

Basic Rights of People Receiving Health Services (2 of 2)

- Laws governing health care have different titles across the country.
- Laws address the rights and freedoms of people receiving health care services.
- Due to constant revisions in health care legislation, you should always be aware of the current acts that govern your own province/territory.

Health Care Legislation

- An *act* is another term for a specific law.
 - Most health care acts consist of general requirements for maintaining health, safety, and well-being.
- Regulations are detailed rules that implement the requirements of the act.

Basic Human Rights in Canada

- All live-in facilities in a province or territory must abide by rules.
 - If they do not, this could result in removal of their license to operate.
- Concern is for the rights and freedoms of people using health care services.

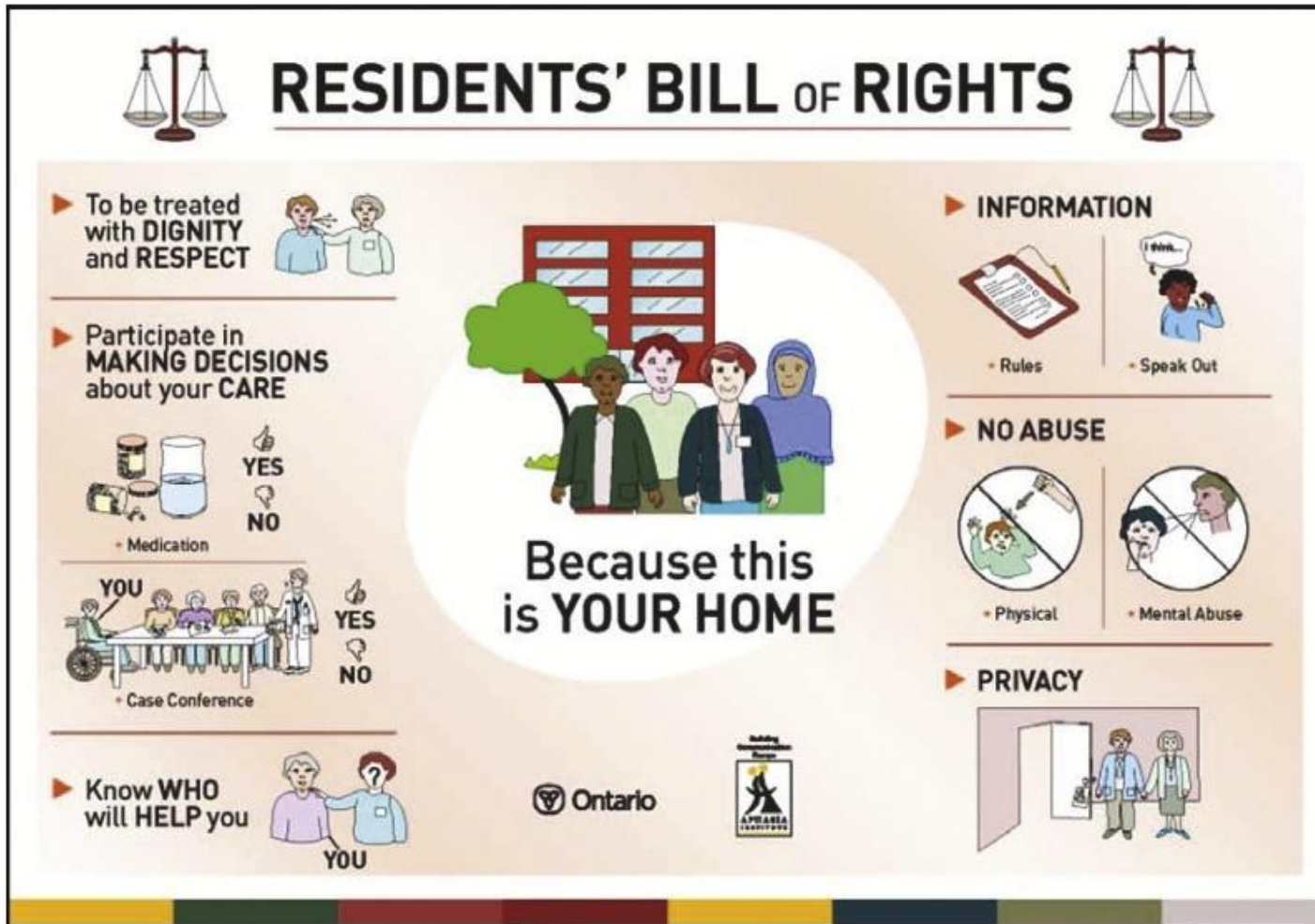
Bill of Rights (1 of 3)

- There is no single Canadian bill of rights for clients receiving care in the community or in a facility.
 - Manitoba and Ontario have each created their own bill of rights for clients.
 - Some facilities and agencies write their own bills of rights, based on provincial or territorial laws.
 - See textbook *Box: 5.2: British Columbia's Residents' Bill of Rights*

Bill of Rights (2 of 3)

- Generally, all clients have the following rights:
 - Right to be treated with dignity and respect
 - Right to privacy and confidentiality
 - Right to give or withhold informed consent
 - Right to autonomy

Bill of Rights (3 of 3)



The infographic is titled "RESIDENTS' BILL OF RIGHTS" and is flanked by two scales of justice. It features a central illustration of four diverse people standing in front of a building, with the text "Because this is YOUR HOME" below them. The infographic is divided into several sections, each with an icon and a list of rights:

- To be treated with DIGNITY and RESPECT**: Accompanied by an icon of two people talking.
- Participate in MAKING DECISIONS about your CARE**: Accompanied by an icon of a person with a thumbs up and a thumbs down.
- Medication**: Accompanied by an icon of a pill bottle and a glass of water.
- Case Conference**: Accompanied by an icon of a group of people sitting around a table.
- Know WHO will HELP you**: Accompanied by an icon of a person with a question mark and another person.
- INFORMATION**: Accompanied by an icon of a clipboard and a person speaking.
- Rules**: Accompanied by an icon of a clipboard.
- Speak Out**: Accompanied by an icon of a person with a speech bubble.
- NO ABUSE**: Accompanied by two icons: one showing a person being hit and another showing a person being yelled at.
- Physical Abuse**: Accompanied by an icon of a hand hitting a person.
- Mental Abuse**: Accompanied by an icon of a person being yelled at.
- PRIVACY**: Accompanied by an icon of a person standing in a doorway.

Logos for Ontario and Aphasia Institute are also present at the bottom of the infographic.

(Source: Aphasia Institute [2005]. *Residents' bill of rights: Pictograph*. Toronto. <http://www.aphasia.ca/shop/ontario-residents-bill-of-rights/>.)

Dignity and Respect

- Being treated with dignity and respect is the guiding principle of caregiving
 - DIPPS
- Respecting the person's dignity and independence is a basic and important part of support work.
- Treating a person with dignity provides emotional support and greatly contributes to their quality of life.
 - See textbook *Box 5.3: Respecting the Client's Right to Dignity*

Privacy and Confidentiality

- Clients have a right to receive care in private, in a way that does not expose their body unnecessarily—only those persons involved in the person's care should see the person's body.
- Information about the client's care, treatment, and condition is confidential.
 - See textbook *Box 5.4: Respecting the Client's Right to Privacy*

Electronic Privacy

- Electronic privacy—person's right not to have his image, words, character description, or comments about his reputation made public by electronic means.
- It is wrong—both ethically and now legally in most provinces—to post pictures, names, or discussions about your clients.

Informed Consent (1 of 3)

- The client has the right to decide what will and will not be done to his or her body and who can touch them.
- In order to make an informed decision:
 - Clients need to understand the reason for treatment, what will be done, and how and who will do it.
 - Clients need to understand the expected outcomes and treatment options.

Informed Consent (2 of 3)

- All provinces and territories have legislation that describes when and how consent is to be obtained.
- For consent to be valid, it must be *informed consent*.
- *Informed consent* is based on having received accurate and complete information.

Informed Consent (3 of 3)

- Consent is *informed* when the person clearly understands:
 - The reason for a treatment, procedure, or care measure
 - What will be done
 - How it will be done
 - Who will do it
 - The expected outcomes
 - Potential risks and side effects of the treatment
 - Other treatment options
 - The likely consequences of not having the treatment

Advance Directives

- Also known as *advance care directives*
 - Legal documents that allow clients to convey their decisions about their own end-of-life care.
 - *Living will*
 - A document that allow clients to convey their wishes to accept or refuse medical care to sustain their life; not legally enforceable.
 - *Substitute decision maker or power of attorney (or proxy)*
 - Allows a person to make decisions for another person who is unable to give consent due to inability to understand.

Decision Maker

- Parent or legal guardian gives consent for clients under the age of 18
- Responsible party (*substitute decision maker*) gives consent for clients who are mentally incompetent, unconscious, sedated, or confused
- A consent form may be required—an RN or PN obtains these.
- The support worker is never responsible for obtaining written consent or giving medical information.

Property

- Will
 - Legal document that states a person's wishes about where or to whom his or her property should go.
- Estate Trustee
 - Guardian of property; carries out instructions of the will
 - A person who acts on behalf of a client in regard to property.
 - In most places, the estate trustee is also known as *executor* or *executrix*.

Autonomy

- Clients have the right to participate in assessing and planning their own care and treatment.
- Personal choice is important for quality of life, dignity, and self-respect.
 - You must allow the client to make choices whenever possible.
 - See textbook box: *Focus on Long-Term Care: Autonomy*

Legal Issues

- Laws tell you what you can and cannot do
 - A *law* is a rule of conduct made by a government body.
 - Liability—if you break the law or violate someone’s rights, you are legally responsible.
 - Criminal laws are concerned with offences against the public and society in general.
 - Civil laws are concerned with relationships between people.

Torts

- A person who commits a tort can be sued by the injured person.
- Torts may be intentional or unintentional.
 - An example of an unintentional tort is *negligence*.
 - Examples of intentional torts are assault, battery, false imprisonment, invasion of privacy, and defamation of character.

Negligence (1 of 3)

- Means the person did not mean or intend to cause harm.
- The negligent person failed to act in a reasonable and careful manner and thereby harmed the person or property.
- The negligent person may have to pay damages to the injured person.

Negligence (2 of 3)

- Negligence includes:
 - Not performing a task or procedure correctly .
 - Performing a task or procedure that you are not qualified to do
 - Making a mistake
 - A client could be harmed even though you do your job competently.
 - See textbook *Box 5.5: Examples of Negligent Acts Committed by Support Workers*

Negligence (3 of 3)

- Accurately record procedures.
 - Your record may protect you from charges of negligence.
- You are responsible for your own actions.
- Sometimes refusal to follow a nurse's directions is your right and duty (e.g., if it would lead you to do something beyond your scope of practice).

Assault

- Intentionally attempting or threatening to touch a person's body without the person's consent.
- The person fears bodily harm.
- Threatening to tie down an uncooperative client is an example of assault.

Battery

- The actual touching of a person's body without the person's consent
 - e.g., force-feeding a client
- The client must consent to any procedure, treatment, or other act that involves touching their body.
- The client has a right to withdraw any consent.
- Consent can be expressed verbally or through a gesture.

False Imprisonment

- *False imprisonment* is unlawful restraint or restriction of a person's freedom or movement.
- Threat of restraint or unnecessary use of actual physical restraints is false imprisonment.

Invasion of Privacy

- The right to not have private or personal information made public without consent
- Invasion of privacy is punishable by law
 - *Freedom of Information Act*
 - *Access to Information Act*
 - *Privacy Act*

Defamation of Character

- *Defamation* is injuring the name and reputation of a person by making false statements about them to someone else.
- *Libel* is making false statements in print, writing, or through pictures or drawings.
- *Slander* is making harmful false statements orally.
 - e.g., *Saying that a client is insane or mentally ill*

Awareness of Your Role

- If a support worker performs duties beyond his or her scope of practice and these duties were never delegated and taught by the registered staff, the support worker is actually assaulting the client.
- Support workers must understand the responsibilities within their role and safely act within these boundaries.

Human Rights Legislation

- Legislation that protects worker's basic human rights.
- Employers must:
 - Treat all workers equally
 - Not discriminate on the basis of the worker's race, colour, gender, sexual orientation, religion, age, or disability
- Workers have the right to be free from harassment.

Occupational Health and Safety Legislation (1 of 2)

- Safety is a basic need.
- In a safe setting, a person has little risk for illness or injury.
 - The person feels safe and secure.
- Your employer is also responsible for providing a safe working environment for you.

Occupational Health and Safety Legislation (2 of 2)

- Outlines the rights and responsibilities of workers, employers, and supervisors in creating and maintaining a safe work environment.
- Workers have the right to receive proper training, instruction, and supervision to ensure their safety.
- Workers have the right to refuse duties if the work poses a danger to themselves or others.
 - Workplace Hazardous Materials Information System (WHMIS)

Employment Standards Legislation

- States the minimum acceptable employment standards within the workplace
- Covers basic rules about issues such as:
 - Minimum wage
 - How wages are paid
 - How many hours of work per day and per week are acceptable
 - Fair overtime pay
 - Holidays and vacation days
 - What situations qualify the worker for a leave of absence

Labour Relations Legislation

- Addresses how employers and employees can resolve workplace issues; ensures that employees have the right to form or join a union
- Sets out rules for negotiation—collective bargaining
- Identifies unfair labour and employee conduct

Workers' Compensation Legislation

- Addresses how workers are financially compensated for accidental injuries on the job.
- Discusses workers' and employers' rights when an injury occurs.

Other Legislation

- Long-term care facilities legislation
 - Provincial and territorial
 - Addresses basic rights
- Community services legislation
 - Sets out rules and procedures for accessing and providing community services, including support work