

# REPORTING CHILD ABUSE IN ONTARIO

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## INTRODUCTION

In the wake of several inquests into the deaths of a number of children in Ontario the provincial legislature enacted significant amendments to the Child and Family Services Act, the provincial child welfare legislation, effective March 31, 2000. The amendments included changes to the obligations imposed on individuals, both in professional and lay capacities, to report child abuse with the apparent intent of earlier intervention and investigation. This article reviews the scope of the obligation to report and the consequences flowing from both compliance and breach.

At the outset it would be safe to conclude that the obligation to report is drafted much broader than predecessor legislation such that Children's Aid Societies will be called upon to intervene into the lives of individuals and families causing in some cases questions and upset. There is of course a natural reluctance on the part of people to not want to get involved and to challenge the intervention of authorities be it the police or Children's Aid workers for the integrity of someone's family unit is then at stake. There is also the understandable reaction of those involved in perhaps what might be marginal situations or situations where the suspicions of one are in fact not proved out. On the other hand there are the lives of some children who have been endangered or loss because someone chose to turn and leave the responsibility to another. The obligation to report child abuse is an attempt to mandate for all individuals and organizations a course of conduct, which gives priority to those individuals who, might not have a voice. For organizations that work with children the legislation mandates proactive legal-risk management, training and education.

## THE LEGISLATION

Section 72 of the Child and Family Services Act imposes on all persons who have reasonable grounds to suspect physical, emotional or sexual harm to a child, or in some cases the suspicion that a child is at risk of suffering harm, the obligation to report the situation to the local Children's Aid Society. This obligation includes reporting suspicions of "negligent parenting" in the caring for, providing for, supervising or protecting a child. The legislation specifically addresses the types of harm but not what will be deemed to cross the line creating the obligation to report thus the potential for controversy and upset. The relevant parts of the legislation are attached as a schedule to this paper.

The obligation is an ongoing one. The mere fact that one may have reported on one occasion does not relieve one of the duties if there are further suspicions on reasonable ground. (Section 72(2)).

The obligation is imposed on the individual with the grounds. It is a duty that cannot be delegated to another or entrusted to another to hopefully report. (Section 72(3)).

The reporting duty extends to information that may otherwise have been confidential or privileged except if the information is as between a lawyer and his client. (Section 72(7)(8)).

## THE REPORT

The obligation to report is exactly that it is not an obligation to investigate. The responsibility to investigate is that of the police and the Society worker. If one takes upon him the investigation then it could potentially jeopardize the ultimate investigation and in fact could put at risk the very children that are the subject of the concern. If there is any concern then it is possible to call the Society and speak on a John Doe basis to enquire without disclosing names or circumstances. If this query is made however be aware that it will not satisfy the obligation to report if one exist.

For those individuals who make a report to the children's Aid Society of suspected child abuse they will in all likelihood receive very little feedback from the investigation as the investigation and any proceedings arising from an intervention are to be confidential.

There is also no guarantee of anonymity in the making of a report although Children's Aid workers will try and

preserve the source if possible subject to the matter proceeding into the criminal or child welfare courts. It might also require the informant to testify in court if the need arises.

It is recommended that any person reporting a case carefully document their "suspicions" and the details of their report, including the time and person to whom they reported the situation. Employees and/or volunteers should, with the appropriate caution, ensure that the organizations they serve are aware of the report, as other steps may be necessary. Organizations need to provide a mechanism for their staff for the handling of these matters as well as a process to seek the appropriate guidance from legal and/ or insurance advisors. Organizations might consider consulting with representatives of local Children's Aid Society in advance for some training and should, in any event develop a written protocol.

## CONSEQUENCES FLOWING FROM THE DUTY

There can be any number of consequences that may flow from the Duty to Report. The first consequence is the impact it has on the reporter as it usually involves a commitment many of us do not want to face that being one of involvement in someone else life. It could interfere in relationships or disrupt organizations but that risk has been deemed to take secondary to the risk that a child is at risk. The consequences that flow from the decision to report or not go beyond the personal for there are legal consequences.

The consequences of "failing to report" as required are serious. Section 72(4) provides that if a person performing professional or official duties with respect to children fails to report then such person could face a quasi-criminal process, which could, if the person is convicted, lead to a fine of \$1000.00. Section 72(6.1) extends the risk potential to any director, officer or employee of a corporation who effectively condones the failure to report. The provisions of Section 72(5) define the person who have to "higher" risk as including family counsellors, clergy members, teachers, daycare workers, doctors and youth workers excepting certain circumstances.

The other potential consequence for failing to report is a civil remedy for monetary damages claimed by a person adversely affected by the failure. This could mean a claim by the child who was being abused or potentially children who were later abused by the person who would have been reported if it could be reasonably demonstrated that the reporting may have precluded either ongoing abuse or fresh abuse of others. It is a serious risk for most individuals and organizations do not have liability insurance to respond to such a claim or absorb the legal fees that would be involved in defending a claim. For organizations serving children the risk can be grave as it is often difficult to monitor all staff and to be aware of situations in a timely manner. The courts have not demonstrated much empathy for an organization that might have reasonably taken steps that might have precluded abuse of children. It is also quite possible that liability claims might also not come to the attention of those facing the claim until years down the road when evidence or records may have destroyed or key witnesses are no longer available. This potential consequence underlines the need to take the obligation to report very seriously and the need for organizations to ensure the appropriate training and education for staff not only on the duty to report but in making sure places of service for children are safe places.

If a person reports a situation either maliciously or without reasonable grounds for the suspicion then the "victim" of the report could commence a civil claim for the damages they have incurred as a result. This potential is in place for those persons who act irresponsibly. Society workers and police officers are generally immune from these claims if they have had reasonable grounds to investigate on receiving a report even if it is later proven unwarranted. Care must be taken by all involved with preference being given to the security of the child.

## CONCLUSIONS

The Child and Family Services Act has as its mandate the protection, safety and well being of children. The imposition of a duty on all persons to report child abuse is part of this mandate notwithstanding that the intervention may cause upset or involves those who do not want to become involved. The balancing act of interests is a difficult one but children must come first, as they are the most vulnerable and the risk too high.

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