



April 30, 2018

The Duty to Report under the *Child, Youth and Family Services Act, 2017*

Introduction:

In 2014, the Office of the Chief Coroner of the Province of Ontario released 103 recommendations relating to an inquest into the death of a young child who had involvement with the child protection system. Of the 103 recommendations, a number focus on the duty to report child abuse and neglect as set out in the former *Child and Family Services Act, R.S.O.1990* (the “CFSA”). The inquest jury also recommended that the Ministry of Children and Youth Services further promote public and professional awareness to ensure suspected child abuse and neglect are consistently reported across the province. On April 30, 2018, the CFSA was repealed and the majority of the *Child, Youth and Family Services Act, 2017* (the “CYFSA”) was brought into force.¹ This article has been developed to assist members of the Ontario College of Social Workers and Social Service Workers (the “College”) to better understand their **duty to report** under section 125 of the CYFSA. It does not provide specific legal advice.^{2, 3}

The Duty to Report:

Protecting the confidentiality of clients’ information is a professional, ethical, and legal obligation, and a central value in social work and social service work practice. Principle V: Confidentiality in the Standards of Practice requires members to “hold in strict confidence all

¹ Part X (Personal Information) of the CYFSA does not come into force until January 1, 2020.

² Members should consider obtaining legal advice to help them with a specific situation.

³ This article is current as of April 30, 2018.

information about clients” and to “disclose such information only when required or allowed by law to do so or when clients have consented to disclosure”.⁴ The College’s Professional Misconduct Regulation, O. Reg. 384/00, also prohibits the disclosure of client information without consent, subject to certain exceptions. One of the exceptions is “as required or allowed by law”. Members have a **duty to report** (an obligation to disclose certain confidential client information without consent) as required by section 125 of the CYFSA. Because social workers and social service workers engage frequently (both directly and indirectly) with children who may be at risk of harm or in need of protection, they are in a unique position to recognize possible signs of child abuse and neglect; it is therefore imperative that they be well-informed with respect to their duty to report under the CYFSA.

The CYFSA and a Child Who Is In Need of Protection:

Section 125 of the CYFSA imposes a **duty to report** on any person, including those who perform professional or official duties with respect to children (including social workers and social service workers) if they have **reasonable grounds** to *suspect* that a child is in need of protection. The CYFSA provides that a child is in need of protection if they have suffered or are at risk of suffering certain defined types of harm, or they fall within certain circumstances, listed in the CYFSA.

Set out below is a description of the harms, risks or circumstances listed in section 125 of the CYFSA:

Physical harm includes situations in which:

- a child has suffered physical harm, or there is a risk that a child is likely to suffer physical harm, inflicted by the person having charge of the child. This can include the use of deliberate physical force that results in pain or injury.
- a child has suffered physical harm, or there is a risk that a child is likely to suffer physical harm, as a result of that person’s neglect of or failure to adequately care for, provide for, supervise or protect the child.

⁴ *Code of Ethics and Standards of Practice Handbook, Second Edition 2008*, Principle V: Confidentiality

- a child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996* (the "HCCA") refuses to provide the treatment, or is unavailable or unable to consent to, the treatment.

Sexual harm includes situations in which:

- a child has been sexually abused or sexually exploited, or there is a risk that the child is likely to be sexually abused or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.

Emotional harm includes situations in which:

- a child has suffered emotional harm, or there is a risk that the child is likely to suffer emotional harm, demonstrated by serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour or delayed development, and there are reasonable ground to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
- a child has suffered emotional harm as described above or there is a risk that the child is likely to suffer such emotional harm, and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the HCCA, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate or prevent the harm.
- a child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the HCCA, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.

Death or unavailability of parent includes situations in which:

- a child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody
- a child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.

Acts of a criminal nature include situations in which

- a child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to the treatment under the HCCA, refuses or is unavailable or unable to consent to treatment.
- a child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

Issues to Consider When Making a Report:

- As a social worker or social service worker, you are in a unique position to recognize possible signs of abuse and neglect.
- Reports of suspected child abuse or neglect and the information on which the suspicion is based must be made immediately to a **Children's Aid Society (CAS)**.
- A **child** is anyone under the age of 16.
- **You** must report **directly** to a CAS. You cannot rely on another person to make the report on your behalf.
- Your obligation to report is **ongoing**. You must make another report to a CAS if you have additional reasonable grounds to suspect a child is in need of protection, even if you have already made previous reports with respect to the same child.
- You have a legal obligation to make a report to a CAS if you have additional **reasonable grounds** to suspect that one of the harms, risks or other circumstances listed in section 125 of the CYFSA exists. The Ministry of Children and Youth Services states that "reasonable grounds" refers to information that an average person, using normal and honest judgment, would need in order to decide to report.⁵
- If a child is 16 or 17, you do not have a legal obligation to report to a CAS if the harms, risks or circumstances listed in section 125 of the CYFSA exist. However, you **may**

⁵ The Ministry of Children and Youth Services typically has helpful information about reporting child abuse which can be found at <http://www.children.gov.on.ca/htdocs/English/childremsaid/reportingabuse/index.aspx>.

make a report if any of those harms, risks or circumstances exist⁶, or if a circumstance or condition described in a regulation exists.⁷

- A person who performs professional or official duties with respect to children is guilty of an offence if he or she does not report a reasonable suspicion that a child may be in need of protection and the information on which it was based was obtained in the course of his or her professional or official duties. A person convicted of such offence is liable to a fine of up to \$5,000.00.
- The CYFSA specifies that a person who acts in accordance with the duty to report is protected from civil actions, unless the person acts maliciously or without reasonable grounds for the suspicion.
- You may need to weigh several factors and exercise **professional judgment** when determining whether or not you have a duty to report in a particular situation. This includes careful consideration of the case-specific details, relevant standards of practice and applicable legislation. In addition to seeking supervision/consultation, you may also choose to seek an opinion from a lawyer.
- In addition to the duty to report, you may have additional obligations to the client based on the **standards of practice**.
- For contact and other information about Ontario's CAS's, please visit the Ontario Association of Children's Aid Societies' website at: www.oacas.org. You can also locate a CAS in the local telephone listings or, where available, by dialing 411.
- The Ministry of Children and Youth Services typically has helpful information about reporting child abuse which can be found at <http://www.children.gov.on.ca/htdocs/English/childrensaids/reportingabuse/index.aspx>.

For further information about this issue, members are strongly encouraged to review *[The Code of Ethics and Standards of Practice Handbook, 2nd Edition, 2008](#)* and the Practice Notes called "[Meeting Professional Obligations and Protecting Clients' Privacy: Disclosure of Information without Consent](#)" which are available on the College's website at www.ocswww.org.

⁶ The circumstances with respect to acts of a criminal nature only apply to a child younger than 12.

⁷ As of April 30, 2018, no regulation has been made that describes any additional circumstances or conditions with respect to a child who is 16 or 17.