

Professional Advisory

Duty to Report

The College of Early Childhood Educators has developed this professional advisory to address the requirement to report child abuse under section 72 of the **Child and Family Services Act, 1990** (CFSA). This is part of the College's ongoing commitment to advise registered early childhood educators (RECEs), employers and the public on the roles and responsibilities set out for RECEs through legislation. As RECEs have a responsibility to protect children from harm, it is essential that they are knowledgeable about their duty to report to a Children's Aid Society (CAS) under the CFSA. This professional advisory is designed to explain the duty to report section of the CFSA and to emphasize the responsibilities of the early childhood educator. It is not intended to provide specific legal advice.

June 2015



Introduction

The College of Early Childhood Educators was established under the **Early Childhood Educators Act, 2007** (ECE Act). The College is a self-regulatory body that regulates Ontario's early childhood educators in the public interest. The primary duty of the College, in carrying out its objects, is to serve and protect the public interest. The College has issued over 54,000 Certificates of Registration to individuals who are eligible to practise the profession of early childhood education.

Registered early childhood educators are expected to be accountable for their actions as early childhood educators and to abide by the College's *Code of Ethics and Standards of Practice* as well as all applicable legislation, regulations, by-laws and policies that are relevant to their professional practice. The ECE Act and the College's Professional Misconduct Regulation state that it is an act of professional misconduct to "[contravene] a law, if the contravention has caused or may cause a child who is under the member's professional supervision to be put at or remain at risk." RECEs should also familiarize themselves with reporting requirements under the *Child and Family Services Act, 1990* (CFSA) and abide by them as the failure to do so is contrary to the law and may constitute professional misconduct.

RECEs work with a vulnerable population and it is among their responsibilities to build positive, trusting relationships with families and children. As such, they are in a unique position to recognize possible signs of child abuse, neglect and family violence. It is important that RECEs are aware of, and prepared to act on, their legislated duty to report suspicions of harm or misconduct towards children.

The CFSA and the Children's Aid Society

The CFSA is Ontario legislation that came into effect in 1990 and is enforced by the Ministry of Children and Youth Services. The primary purpose of the CFSA is to promote the best interests, protection and well-being of children.¹

In pursuit of that purpose, section 72 of the CFSA focuses on the duty to report suspicions of harm and the risk of harm to a child. Section 72(1) outlines subsections relating to suspicions that must be reported and are described within this advisory.

The Children's Aid Society (CAS), which may also be known as Family and Children's Services or other names depending on the region or if it is a faith-based agency, is a non-profit agency established under section 15 of the CFSA to provide help and support to children and families. There are 46 CASs located across Ontario. Services that a CAS provides include investigating allegations of abuse, caring for children who come under their supervision, providing guidance and counselling to families as it relates to child protection and adoption services.²

Who is a Child in Need of Protection?

The CFSA defines a child in need of protection as a child who has suffered or is at risk of suffering certain defined types of harm or falls within certain circumstances.³

What are Reasonable Grounds?

The Ministry of Children and Youth Services states it is not necessary for a person to be certain that a child is or may be in need of protection in order to make a report to a CAS. Reasonable grounds refer to what an average person, given their training, background and experience, using normal and honest judgment, and acting in good faith, would cause them to report.⁴ If a person, including a professional, has reasonable grounds to suspect that one of the harms, risks or other listed circumstances exist, they have a duty to immediately report it to a CAS. RECEs do not require certainty or probability that a child is in need of protection before they report to a CAS.

Section 72 of the CFSA

Reportable Harms, Risks and Circumstances

Section 72 of the CFSA imposes a duty to report for everyone, including RECEs, where there are reasonable grounds to suspect one or more of the following with respect to a child:

Physical Harm

The 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 or as a result of that person's neglect of, or failure to adequately care for, provide for, supervise or protect the child.⁵

The child requires medical 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, or refuses or is unavailable or unable to consent to, the treatment.⁶

Sexual Harm

The child has been sexually molested or sexually exploited, or there is a risk that the child is likely to be sexually molested 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 molestation or sexual exploitation and fails to protect the child.⁷

Emotional Harm

The 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 grounds 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.⁸

The child has suffered emotional harm of the type 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, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.⁹

The 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, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.¹⁰

Abandonment

The child has been abandoned, the 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, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.¹¹

Acts of a Criminal Nature

The child is less than 12 years old 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, or refuses or is unavailable or unable to consent to, those services or treatment.¹²

The child is less than 12 years old 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.¹³

Child Pornography*

The CFSA will impose a duty to report sexual exploitation by child pornography 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 exploitation and fails to protect the child.¹⁴

Any person who reasonably believes that a representation or material is, or might be, child pornography shall promptly report the information to an organization, agency or person designated by regulation to receive such reports.¹⁵ Nothing in this section requires or authorizes a person to seek out child pornography.¹⁶

* This portion of the CFSA is unproclaimed. This means that, while the legislation has been passed, it is not yet in effect and will become effective on a date yet to be determined.

Family Violence

Children may also be exposed to family violence, which can take the form of physical, sexual, emotional or financial harm as well as neglect. Children may experience family violence in different ways including directly seeing or hearing violence, being manipulated by the perpetrator, and experiencing the repercussions of violence, such as an injured family member or police intervention. Family violence can create a toxic home environment for children and have an impact on their well-being and development. Although there is no specific reference in the CFSA to reporting children exposed to family violence, it is an interpretation of the law and therefore if an RECE has a concern that a child has been or may be exposed to family violence, they have a duty to report to a CAS.¹⁷

Duty to Report to a CAS

The CFSA clearly states that a person who has a duty to report shall make the report directly to a CAS and shall not rely on any other person to report on his or her behalf.¹⁸

Further, a person who has additional reasonable grounds to suspect a child is in need of protection is required to make another report even if he or she has made previous reports with respect to the same child.¹⁹

Implications of Reporting and Not Reporting

Protection of the Informant

Under the CFSA, an informant is an individual who provides information to a CAS. A confidence cannot be kept if it is suspected that a child is in need of protection. No matter what the relationship between people, one must always follow through on the duty to report suspicions of child abuse.

In some instances, the informant may be required to provide privileged or confidential information when making a report to a CAS. Section 72(7) of the CFSA states that no action shall be instituted against a person who makes a report including confidential information unless the person acts maliciously or without reasonable grounds for the suspicion.

Once certain amendments to the CFSA are in effect, the CFSA will provide a number of additional protections to informants, including protections relating to the informant's identity. Subject to limited exceptions, the amendments to the CFSA will provide that no person shall disclose:

- the identity of an informant to the family of the child reported to be in need of protection, or to the person who is believed to have caused the child to be in need of protection; or
- the identity of an informant to the person who possessed or accessed the representation or material that is or might be child pornography.²⁰

Once in effect, section 72(1.3) will protect a person from being sued for providing information in good faith in relation to the reporting of child pornography. In addition, amendments will be included to protect informants from various types of retaliation. Section 72(1.5) will provide that no person shall dismiss, suspend, demote, discipline, harass, interfere with or otherwise disadvantage an informant for reporting under section 72 of the CFSA. It will be an offence to engage in such retaliation against an informant, or to disclose the identity of an informant.²¹

Consequences of Not Reporting under the CFSA

The duty to report under the CFSA is of such importance that there can be legal consequences for failing to uphold this duty. The CFSA states that a person who performs professional or official duties with respect to children,²² including an early childhood educator, is guilty of an offence if he or she does not report a reasonable suspicion that a child may be in need of protection (i.e. that one of the harms, risks or circumstances listed in section 72(1) may exist), and the information on which it was based was obtained in the course of his or her professional or official duties.²³ They may be liable of a fine up to a \$1,000.

Under the amendments to the CFSA, which are not yet in effect, a person will also be guilty of an offence if that person discloses the identity of an informant or dismisses, suspends, demotes, disciplines, harasses, interferes with or otherwise disadvantages an informant.²⁴

There are also implications for employers if they or their employees fail to report under the CFSA. Section 72(6.1) states that a director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence by an employee of the corporation is guilty of an offence.

A person convicted of an offence listed above is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both.²⁵

Consequences of Not Reporting under the ECE Act

Failure to report under the CFSA may also have consequences for members of the College under the ECE Act and the regulations of the College.

Section 2(21) of Ontario Regulation 223/08 on Professional Misconduct indicates that “contravening a law, if the contravention has caused or may cause a child who is under the member’s professional supervision to be put at or remain at risk,” may constitute professional misconduct. If a complaint is made against a member for failure to report under the CFSA, the complaint will be investigated and considered by the College’s Complaints Committee. The Complaints Committee may refer the matter to the Discipline Committee for a hearing. A discipline hearing may result in a finding of professional misconduct against a member, in which case the College’s Discipline Committee may make various orders, the most serious of which is an order directing that a member’s Certificate of Registration be revoked.

Alternatively, if the Registrar believes, on reasonable and probable grounds, that a College member has committed an act of professional misconduct, the Registrar may appoint an investigator²⁶ to investigate whether such misconduct has occurred. The report of the investigation will then be brought to the attention of the College’s Executive Committee which may consider the matter and may decide to refer allegations concerning the member for a discipline hearing.²⁷

Roles and Responsibilities

In order to effectively protect children, it is important that RECEs, employers and families communicate openly. They should each know their own roles and responsibilities in a situation where it is suspected that a child may be in need of protection, as well as the roles and responsibilities of each other. RECEs should also familiarize themselves with the sections of the College’s *Code of Ethics and Standards of Practice* that may be relevant to the duty to report under the CFSA, including, but not limited to, those highlighted in the section below.

Roles and Responsibilities of the Registered Early Childhood Educator

RECEs have a responsibility to children, families, colleagues, community, society and the profession.

- Standard I states that RECEs are expected to familiarize themselves with available information regarding the relevant family circumstances of children under their professional supervision, and to establish and maintain ongoing and open communication with children’s parents and legal guardians. By fostering a relationship of trust with children and families, RECEs become acquainted with a child’s routine and behaviours and create a supportive and welcoming program where families and children may feel comfortable approaching an RECE with concerns.
- Standard V: A.1 specifically states that RECEs do not abuse physically, sexually, verbally, psychologically or emotionally a child who is under the member’s professional supervision. In addition, the College notes that an RECE engaging in abusive behaviour with a child outside of their professional supervision may also be contrary to other provisions of the College’s standards or Professional Misconduct Regulation.

- Standard III states that RECEs will maintain safe, healthy and supportive learning environments for children. If an RECE has difficulties maintaining this standard, they have a responsibility to obtain assistance. This includes determining what steps should be taken, including seeking support from their employer or participating in relevant professional learning opportunities.
- Standard IV: A.2 states that RECEs have a responsibility to know, understand and abide by the legislation, policies and procedures that are relevant to their professional practice and to the care and learning of children under their professional supervision. RECEs should be familiar with their employer's policy on reporting child abuse, which is expected to be in agreement with the CFSA reporting requirements under section 72. RECEs must know the procedure for reporting and documenting a suspicion that a child is in need of protection, should they witness or otherwise become aware of any of the harms, risks or circumstances listed in section 72.

If an RECE is not familiar with the steps they need to take if they suspect that a child is in need of protection, it is their responsibility to become familiar with and receive training on the legislation, policies and procedures.

If an RECE suspects that a child is in need of protection, they are required to promptly report it to a CAS. Although RECEs may choose to speak with their employer, a trusted colleague or legal counsel before contacting a CAS, they are not required to do so. If an RECE does speak with someone else about the matter, this does not remove the RECE's responsibility to contact a CAS. The RECE must ensure that a CAS is contacted and the report is made.

Expectations of RECEs Employed as Supervisors

RECEs employed as supervisors in early learning and child care settings should be aware that they may have duties under the CFSA in addition to their own direct duty to report. They should ensure that early learning and child care policies outlining the duty to report are in line with CFSA requirements and that all staff members are familiar with these policies.

As previously noted on page 5, 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. In addition, employers are also guilty of an offence if they impede or prevent the exercise of this duty.

RECEs employed as supervisors will not prevent or discourage staff members from contacting a CAS. If an RECE comes to a supervisor with concerns of suspected child abuse, the RECE should expect to be provided with support and encouragement in carrying out the duty to report.

Communication of RECEs with Families

RECEs are not required to consult with a family prior to contacting a CAS, nor are they required to notify a family that a call to a CAS has been made. In fact, it is best practice to consult with a CAS child protection worker about whether and how the parent or caregiver should be informed.

- Standard I states that RECEs are expected to foster caring and nurturing relationships with families, and to maintain ongoing and open communication with families. Regarding the duty to report, RECEs may consider applying this standard, when appropriate, in the following ways:
 - Informing families that a child's RECE should be notified of any injuries the child may have sustained outside of the early learning and child care settings and how these injuries occurred.
 - Notifying families of the incident reporting procedure, so they can be aware of what to expect if an injury occurs to a child while in an early learning and child care setting.
 - Informing families in a clear manner of an RECE's duty to report under the CFSA and how families can also report under the CFSA if they have concerns that a child may be in need of protection.

What is my duty to report under the CFSA?

Under section 72 of the CFSA every person, including persons who perform professional or official duties with respect to children, such as health care workers, teachers, operators or employees of child care programs or centres, police and lawyers, who has reasonable grounds to suspect that a child is or may be in need of protection must promptly report the suspicion and the information upon which it is based to a CAS. It is not necessary to be certain that a child is or may be in need of protection to make a report to a CAS. "Reasonable grounds" refers to the information that an average person, using normal and honest judgement, would need in order to decide to report. The CFSA 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.²⁸

COMMON QUESTIONS

Can I rely on someone else to report suspected child abuse or suspicion that a child is in need of protection?

No. If you have reasonable grounds to suspect that a child may be in need of protection, you have a duty to immediately report to a CAS.

My employer's policy states that I must consult a supervisor before reporting to a CAS so that the supervisor can determine if the call is necessary. Is this correct?

No. Such a policy would be in contravention of the CFSA. If there is a conflict between the CFSA and a member's work environment or the policies and procedures of his or her employer, RECEs have an obligation to comply with the CFSA.

Can I lose my job if I make a report to a CAS?

The CFSA prevents action from being taken against a person who makes a report to a CAS in good faith. Good faith means it was made with honest intent and not as a way to hurt or seek revenge on someone. Proposed amendments to the CFSA will specifically prohibit an informant from being dismissed, suspended, demoted, disciplined, harassed, interfered with or otherwise disadvantaged for reporting to a CAS and will provide that if a person takes action against you for making a report to a CAS, they may be guilty of an offence under the CFSA.

Can I report to a CAS anonymously?

Yes, reports can be made to a CAS anonymously. However, as a professional, it is best practice to give your name and contact information in the event that a CAS needs to contact you for further information that may assist them in protecting a child. For instance, the early learning and child care setting may be a safe place where the child can be interviewed by authorities that may assist them in protecting the child.

What happens once I make a call to a CAS? Will the child be taken from their family?

When you contact your local CAS an intake worker, who is specially trained to address these kinds of concerns, will ask questions before determining how urgent the situation is and what the next steps should be. If the child is in immediate danger, the CAS will respond appropriately. Children are only removed from their families where there is no other safe option and the child is judged to be in imminent danger. If the protection worker determines that the child is not in immediate danger or risk of harm, a customized approach will be designed to connect with the family and address the situation.²⁹

What is the age of the children to whom the duty to report applies?

The duty to report applies to any child who is under the age of 16 years. If a report is made with respect to a child who is 16 years of age or older, a CAS can direct the caller to an appropriate agency or police.

Will I face a disciplinary hearing or lose my membership with the College if I fail to report to a CAS?

If the College becomes aware that a member has contravened the CFSA by failing to comply with his or her duty to report under section 72, the member may be subject to disciplinary action by the College following an investigation. If there is a discipline hearing and if the Discipline Committee determines that the member engaged in professional misconduct, the committee will impose a penalty.

Will the College represent me if I am accused of failing to make a report to a CAS?

No, the College cannot directly provide you with legal advice or legal support. However, you may check the Complaints and Discipline section of the College's website under the heading Available Legal Support for further information. In addition, you should contact your union or professional association, if applicable. You may also wish to seek legal representation.

Contact Information

If you have questions about the information presented in this professional advisory please contact the College at:

College of Early Childhood Educators
438 University Avenue, Suite 1900
Toronto ON M5G 2K8

Telephone: 416 961-8558
Toll free: 1 888 961-8558
Fax: 416 961-8772
E-mail: communications@college-ece.ca
Website: college-ece.ca

If you have questions about the *Child and Family Services Act, 1990*, please contact the Ministry of Children and Youth Services at:

Ministry of Children and Youth Services
ServiceOntario INFOLine
M-1B114, Macdonald Block
900 Bay Street
Toronto ON M7A 1N3

Telephone: 1 866 821-7770
Fax: 416 212-1977
Website: children.gov.on.ca

To locate the Children's Aid Society in your area, please contact the Ontario Association of Children's Aid Societies at:

Ontario Association of Children's Aid Societies
75 Front Street East, Suite 308
Toronto ON M5E 1V9

Tel: 416 987-7725
Toll free: 1 800 718-7725
Fax: 416 366-8317
Website: oacas.org

Did you know?

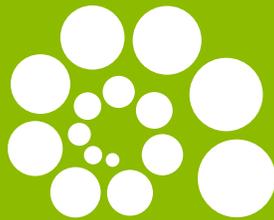
- 69% of sexual abuse cases involved girls and 31% involved boys
- 60% of physical abuse cases involved boys and 40% involved girls
- 69% of physical abuse cases resulted from inappropriate punishment
- Failure to supervise children resulting in physical harm accounted for 48% of neglect cases

Statistics from Boost Child Abuse & Prevention as presented in the Canadian Incidence Study of Reported Child Abuse and Neglect 2008 by the Public Health Agency of Canada.

References

- ¹ CFSA Section 1 (1)
- ² “Children’s aid societies,” Ministry of Children and Youth Services. <http://www.children.gov.on.ca/htdocs/English/topics/childrensaids/childrensaidsocieties/index.aspx>
- ³ CFSA section 37(2) and section 72(1)
- ⁴ “Reporting Child Abuse and Neglect: It’s Your Duty,” Ministry of Children and Youth Services. <http://www.children.gov.on.ca/htdocs/English/topics/childrensaids/reportingabuse/abuseandneglect/abuseandneglect.aspx>; Boost Child Abuse Prevention & Intervention.
- ⁵ CFSA section 72(1) paragraphs 1 and 2
- ⁶ CFSA section 72(1) paragraph 5
- ⁷ CFSA section 72(1) paragraph 3 and paragraph 4
- ⁸ CFSA section 72(1) paragraphs 6 and 8
- ⁹ CFSA section 72 (1) paragraphs 7 and 9
- ¹⁰ CFSA section 72(1) paragraph 10
- ¹¹ CFSA section 72(1) paragraph 11
- ¹² CFSA section 72(1) paragraph 12
- ¹³ CFSA section 72(1) paragraph 13
- ¹⁴ CFSA section 72 (1) paragraph 3 (unproclaimed – child pornography)
- ¹⁵ CFSA section 72(1.1) (unproclaimed)
- ¹⁶ CFSA section 72(1.2) (unproclaimed)
- ¹⁷ Boost Child Abuse Prevention & Intervention. “Children exposed to family violence.” Information sheet #14
- ¹⁸ CFSA section 72(3)
- ¹⁹ CFSA section 72(2)
- ²⁰ CFSA section 72(1.4) (unproclaimed)
- ²¹ CFSA section 72(4.2) (unproclaimed)
- ²² CFSA section 72(5)
- ²³ CFSA section 72(4) and 72(4.1) (unproclaimed)
- ²⁴ CFSA section 72(4.2) (unproclaimed)
- ²⁵ CFSA section 72(6.2) (unproclaimed)
- ²⁶ With the approval of the Executive Committee, under s. 39 of the ECEA
- ²⁷ ECE Act section 32.1(1)
- ²⁸ Ministry of Children and Youth Services
- ²⁹ “Frequently Asked Questions,” Ontario Association of Children’s Aid Societies. <http://www.oacas.org/childwelfare/faqs.htm#age>

This publication is not intended to provide a complete understanding of the legal requirements regarding the duty to report under section 72 of the *Child and Family Services Act, 1990*. It does not constitute legal advice. It is intended to assist members of the College of Early Childhood Educators and the public gain a better understanding of the legal and professional responsibilities that relate to the duty to report under section 72 of the CFSA.



cece

college of
early childhood
educators

College of Early Childhood Educators

438 University Avenue, Suite 1900

Toronto ON M5G 2K8

Telephone: 416 961-8558

Toll free: 1 888 961-8558

Fax: 416 961-8772

Email: communications@college-ece.ca

Website: college-ece.ca

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sous le titre: **Avis professionnel : Devoir de faire rapport**