

Child Abuse, Reporting and the Law



Contrary to some popular belief, child abuse is not a private family matter. Every province has its own child protection laws that require child abuse or neglect be reported. If you have reasonable grounds to suspect that a child is being abused or neglected, it is your responsibility to report your concerns to the child welfare agency, social service department, or police in your community. Reporting is neither difficult nor time-consuming. Anonymous reports are accepted and acted upon.

People who report suspected abuse cannot be sued unless their report is made out of malice. The “best interests” of children are the main concern of protection laws and services. It is the responsibility of the appropriate authorities to decide if a child is being abused.

Talking to young victims of child abuse

Diminish aspects of power and authority over the child. Position yourself at eye level, reduce formality, and speak simply and slowly. Do not use the authority of others (e.g. “Your Mom wants you to tell me what your Daddy did.”)

- Emphasize that you do not know what happened. This helps diminish the idea that you are trying to confirm what you already know.
- Alternate specific questions with open-ended questions such as “Tell me more about that” or “What else do you remember?”
- Children younger than 6 years of age rarely have the cognitive skills to provide details such as time frames, intent, and number of times.
- Talk less, listen more, and follow the child’s cues.
- Don’t bribe with things or promises, threaten, or cajole. You are not out to “prove” that abuse occurred.
- Young children get anxious or distracted, and their interest fades quickly. Don’t be impatient or push too hard for answers.
- Because physical abuse may occur in the context of routine parent-child conflicts, children can be provided with brief segues that normalize the use of punishment and encourage discussion of the details surrounding relevant incidents (i.e. “Children can get disciplined for doing different things; how often do you get punished, and in what ways?”) This inquiry may be less threatening than probes into the alleged abusive incident.
- Most sexual abuse is accompanied by some kind of threat or admonishment not to tell. It is frequently the belief that the threat will come true that keeps very young children quiet. Uncovering

the threat (i.e. “What would happen if you told me the secret?”) and allaying the fear may be very important.

- Watch what you say or imply about a suspected abuser; it may unduly influence a child’s report or inhibit disclosure due to a child’s positive feeling for or attachment to an a parent or caregiver who uses abusive behaviours.

The following statements can be used when talking to young children:

- “There are no right or wrong answers; only the things that you know.”
- “The truth is the best answer; no pretending or making things up. Only what’s real.”
- “If you know the real answer but you don’t want to tell me something, just say you don’t want to talk about it. That’s okay.”
- “If I get something wrong or I don’t understand what you mean, I want you to tell me. I won’t get mad. Sometimes I might get confused and need your help.”

Duty to Report

Although Canadian law generally gives priority to the protection of children over the privacy interests of adults, there are significant tensions between these competing concerns and substantial variations in how different provincial governments and judges have balanced these competing interests.

Although there are significant variations in the laws in different Canadian provinces and territories, in general these laws are intended to promote reporting by sanctioning those who fail to report. The laws also encourage reporting by providing legal protection to those who report cases in good faith.

Prosecutions for failure to report are relatively rare, and almost all Canadian cases involve professionals, generally health care professionals, who have the most training in identification of child abuse and the most education about their legal obligation to report.

This legal duty to report is important for an educator, who may have to or want to maintain a relationship with the parents, to be able to emphasize that reporting suspicions of abuse is not a matter of choice but of legal duty.

An emerging legal issue in the United States has been the imposition of civil liability on those who fail to report when such failure results in a child’s suffering further abuse. The prospect of civil liability both encourages reporting and provides compensation for victims of abuse who suffer further injury because of a person’s failure to report. As of 1998, there had been no reported Canadian cases in which a parent has been able to pursue an action against a professional or other person for making an unfounded allegation of abuse or neglect to a child protection agency.

The reported Canadian cases in which individuals have been prosecuted or faced civil liability for failure to report have usually involved cases of physical or sexual abuse with clear evidence of abuse.

In all jurisdictions, the reporter does not need to know that abuse or neglect has occurred; it is sufficient for there to be “reasonable and probable grounds to believe” that it has occurred, or “reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse”.

In a number of Canadian jurisdictions, health care providers, teachers, and other professionals who perform duties with respect to a child are held to a higher standard of reporting abuse and neglect than others.

Although most jurisdictions allow for a jail sentence for non-reporting, the reported cases suggest that a fine is the usual penalty, reflecting the “educational” intent of these provisions. In every jurisdiction, the offense is “summary”, meaning that the prosecution is conducted in a provincial or territorial Court by a judge sitting without a jury.

In Alberta, the maximum penalty for non-reporting is a \$2,000 fine, or 6 months in jail if unable to pay the fine. Civil immunity for good faith reporting is also assured in Alberta, as is confidentiality of the reporter. The identity of a reporter is only to be revealed with the consent of the Minister of Family and Social Services (for the relevant legislation, see *Alberta's Child Welfare Act*). In Alberta, suspected child abuse is reported to Child Protection.

Reporting legislation grants immunity only for good faith reports of suspected abuse or neglect made to child protection authorities—communications about suspected abuse that are outside the legislation are not granted statutory protection. For example, if a teacher is considering whether to report, and discusses a case with a colleague before reporting to the child protection agency, the discussion is not technically covered by reporting legislation.

It is apparent that, for most individuals, the threat of prosecution is not a major factor in their decision to report. Rather, it is a feeling of moral obligation to children and society that motivates reporting, and in the case of professionals, the threat of professional discipline and civil liability.

Alberta's Child, Youth and Family Enhancement Act (excerpts)

(3) For the purposes of this Act,

(a) a child is emotionally injured

(i) if there is impairment of the child's mental or emotional functioning or development, and

(ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of

(A) rejection,

(A.1) emotional, social, cognitive or physiological neglect,

(B) deprivation of affection or cognitive stimulation,

(C) exposure to domestic violence or severe domestic disharmony,

(D) inappropriate criticism, threats, humiliation, accusations or expectations of or toward the child,

(E) the mental or emotional condition of the guardian of the child or of anyone living in the same residence as the child;

(F) chronic alcohol or drug abuse by the guardian or by anyone living in the same residence as the child;

(b) a child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

(c) a child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behaviour including prostitution related activities.

Reporting child in need

4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.

(1.1) A referral received pursuant to section 35 of the Youth Criminal Justice Act (Canada) is deemed to be a report made under subsection (1).

(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.

(3) This section does not apply to information that is privileged as a result of a solicitor–client relationship.

(4) No action lies against a person reporting pursuant to this section, including a person who reports information referred to in subsection (3), unless the reporting is done maliciously or without reasonable and probable grounds for the belief.

(5) Notwithstanding and in addition to any other penalty provided by this Act, if a director has reasonable and probable grounds to believe that a person has not complied with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the director shall advise the appropriate governing body of that profession or occupation of the failure to comply.

(6) Any person who fails to comply with subsection (1) is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.

Sec. 3 Reporting child in need.

1) Any person who has reasonable and probably grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director.

2) [*Confidential information*]. – Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.

3) [*Solicitor-client relationship*]. – This section does not apply to information that is privileged as a result of solicitor-client relationship.

4) [*Limitation of liability*]. – No action lies against a person reporting pursuant to this section unless the

reporting is done maliciously or without reasonable and probably grounds for the belief.

5) [*Duty of director*]. – Notwithstanding and in addition to any other penalty provided by this Act, if a director has reasonable and probably grounds to believe that a person has not complied with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the director shall advise the appropriate governing body of that profession or occupation of the failure to comply.

6) [*Offence*]. – Any person who fails to comply with subsection (1) is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.

s.91(4) Notwithstanding subsection (2), the name of a person who reports to a director pursuant to section 3 or 4 shall not be disclosed or communicated to any person without the consent in writing of the Minister. (1996, c. C-7.3, s. 23(14)(b).)

How educators respond

A number of Canadian studies have been conducted to identify trends in reporting by education professionals. (The following is summarized from *A Selected, Annotated Bibliography of Child Maltreatment Reporting by Education Professionals*, Child Maltreatment Division of the Bureau of Reproductive and Child Health, Health Protection Branch, Health Canada, 1999.)

- A BC study in 1994 found that most teachers were aware of the child abuse reporting legislation, but were unaware of the reporting procedures, particularly that they were required to report suspected child abuse “immediately” to Child Protection. The study also found:
 - Educators reported physical abuse most frequently, while emotional abuse was reported least frequently.
 - Lack of evidence was stated as the most common reason for not reporting suspected child maltreatment, and over 40% of teachers who did not report suspected child abuse feared that such a report would have negative consequences for the child or the family.
 - The level of information about child abuse issues was significantly related to a teacher’s reporting tendency.
- An Ontario study from 1994 found that many teachers felt that it was the principal’s job to contact Child Protection. The same study found that principals were less likely than teachers to apply the abuse label than teachers. The study also found:
 - Teachers worried that reporting would be too disruptive for the child’s family life.
 - Teachers expressed concern that the report would negatively affect the working relationship with children and their families.
- Another Ontario study found that more than 90% of teachers surveyed were afraid of parents taking their anger out on a child as a result of reporting.

- A 1993 Ontario study found that when teachers did not report suspected cases of abuse, it was because they felt they had insufficient evidence to proceed and preferred informal intervention to determine whether a formal report would be supported.

Responding to a disclosure

A child you know may tell you about an abuse situation, either theirs or that of someone they know. When a child tells you about abuse, it is called a disclosure.

If a child discloses abuse to you, do not probe for details. Listen to the information provided and record it as soon as possible in the child's own words. Be supportive and let the child know it is right to tell someone.

- Listen to the child as openly, calmly, and quietly as you can. Be non-judgmental.
- Reassure the child that it is right to tell
- Acknowledge the child's feelings
- Don't make promises you can't keep (e.g. that you'll keep a secret)
- Tell the child:
 - That you believe them
 - That you are glad they told you
 - That it is not their fault
 - That you will do your best to find help
 - That you cannot keep this information a secret (it is the law that this information must be reported)
- Say "I'll try to help"
- Write down what you heard and saw: quote the child's words as much as possible
- Keep your notes and information confidential and secure
- Immediately report the disclosure to local child protection services
- Do not:
 - Interrupt the child's story
 - Promise to keep disclosure confidential
 - Ask leading questions
 - Show horror or anger
 - Conduct your own investigation
 - Provide opinions or judgments

- Promise the child what will happen
- Promise things will get better
- Make judgments about the abuser

Reporting

Every child exposed to family violence is vulnerable. There is no safe age and no safe level of violence. Physical, emotional, and sexual abuse must be reported, as well as neglect or anything that endangers the development, security, or survival of a child.

Although helping can feel awkward when you are uncertain or you feel you lack proof, inaction is not a solution. If you suspect a child is experiencing family violence, it is your duty to contact authorities to explore the situation.

Trust your instincts. Reporting child abuse is always treated confidentially and reports can be made anonymously.

Disclosure Checklist

- ✓ Your name and telephone number
- ✓ Your relationship to the child and how long you've known the child
- ✓ Whether the child or family knows that you are reporting
- ✓ The child's name, sex, birth date, address, and telephone number
- ✓ School name and address
- ✓ Whether the child is Aboriginal and, if so, whether the child belongs to an Aboriginal community
- ✓ The name, address, and telephone number of the alleged perpetrator, if known, and other information which may assist in locating or identifying that person
- ✓ The name, address, and telephone number of the parent or guardian's home
- ✓ The name, address, and telephone number of the parent or guardian's workplace

If disclosed:

- ✓ When and where the abuse took place
- ✓ How long the abuse has been going on
- ✓ Whether the situation has worsened
- ✓ Current location of the person who uses abusive behaviour or parent or guardian
- ✓ Your own observations
- ✓ Other indicators of abuse

- ✓ Full details of the incident or situation which precipitated the report, being as specific as possible, and noting details, events, or behaviour that caused concern
- ✓ Whether you are aware of any efforts made to resolve the situation and the results
- ✓ The child's condition and any concerns about the child's immediate safety
- ✓ Whether you know anything about the situation or alleged perpetrator that might pose a threat to an investigator
- ✓ Whether there is a language barrier or disability that would require assistance

How to report in Alberta

If you suspect a child is being abused, neglected or exposed to family violence, you are required by law to report your suspicions immediately. To report, call one of the following:

- Your local emergency number (911)
- The 24-hour Child Abuse Hotline at 1-800-387-KIDS (5437)
- Your local Child and Family Services Authority. You can look up your local office on this web page: http://www.child.alberta.ca/home/local_offices.cfm



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