



Nova Scotia Board of Examiners in Psychology

Suite 455, 5991 Spring Garden Road
Halifax, Nova Scotia
B3H 1Y6
www.nsbep.org

Telephone: (902) 423-2238
Fax: (902) 423-0058

Legal Reporting Duties for Psychologists in Nova Scotia regarding Child Abuse

The detailed memo, that follows, from the NSBEP's Legal Counsel outlines psychologists' legal duties to report child abuse/neglect in Nova Scotia. Please note that the memo contains general legal information and does not constitute legal advice to the NSBEP registrants. Registrants that require specific advice with respect to the duty to report are encouraged to contact their legal counsel.

The primary message of this document is that there is generally an obligation to report where the professional, "in the course of that person's professional or official duties has reasonable grounds to suspect that a child

- i. has or may have suffered abuse;
- ii. is or may be suffering abuse; or
- iii. is or may be about to suffer abuse in the imminent future,"

While many registrants are aware of the need to report, we wish to clarify that this duty continues to apply even where the professional has indirect or second hand information that the Department of Community Services (DCS) may be aware of a matter, i.e., avoid making the assumption that there is no need to report because someone else probably reported alleged abuse or DCS was already working on the child's file. As you will also note later in this document, the legislation contains a protective clause where "a person who complies with the general duty to report is immune from liability, except where the reporting is done falsely and maliciously."

Given the implications of working with any individuals where a professional may come across information requiring mandatory reporting, the memo and other information directly below is provided by the NSBEP in order to offer guidance to psychologists, when they are faced with such cases:

- Consult with experienced colleagues.

- A general contact could be made with a DCS office for consultation about the information of which the professional is aware. This is not the same as reporting to DCS; this refers to making a general enquiry by posing your situation to DCS.
- It is recommended that each practice have clear policies involving working with children and adolescents, including reporting obligations, that form part of their written practice policies/consent forms, and to make policies available to the public in their documentation and on practice websites. It is also recommended for practices that do not even work with children to at least mention these reporting obligations. Despite being a legal obligation, providing this information about reporting requirements on a proactive basis is particularly important, given that should the psychologist need to report, it may impact the psychologist's work with the family and/or individual(s).
- Psychologists dealing with difficult situations concerning reporting should be sure to document their ethical decision-making process and rationale and be prepared to support their decision.
- As the NSBEP is not able to provide legal advice, consider asking a lawyer for advice in complex situations. Psychologists may find it helpful to start with the pro-bono legal hotline of their professional liability insurer, but in complicated cases, might consider consulting their own legal counsel.
- The NSBEP acknowledges that psychologists should weigh their ethical obligations and professional clinical judgment when considering complex legal matters.

MEMORANDUM

TO: NSBEP

FROM: Ryan Baxter

DATE: August 10, 2020 File No.: 115306

RE: Legal reporting duties for psychologists in Nova Scotia regarding child abuse

I. OVERVIEW

The ***Child and Family Services Act***, SNS 1990, c 5 (“*CFSA*”) is designed to protect children from abuse and neglect.

CFSA came into effect in 1991. The Nova Scotia legislature proclaimed a series of amendments in December 2016. The amendments came into effect on March 1, 2017. The government implemented the amendments to promote early intervention and are intended to prevent long-term harm.

Pursuant to *CFSA*, every individual in the province of Nova Scotia has a legal obligation to report information that a child is in need of protective services. Professionals have further duties to report suspicions of child abuse.

These duties exist regardless if the information is confidential or privileged.

CFSA sets out three types of duties to report:

1. General duty;
2. Professional duty; and
3. Third-party abuse.

Each duty applies to psychologists practising in Nova Scotia. Failing to report may result in harm to a child. Further, a failure to report is a criminal offence and carries significant legal consequences. Accordingly, it is critical that psychologists fully understand and appreciate their applicable legal reporting duties.

II. GENERAL DUTY

CFSA requires anyone with information indicating that a child under the age of 19 is in need of protective services to immediately report the information to the applicable agency. Requiring all persons to report is intended to ensure children in need of protective services can be recognized, assisted, and kept safe.

The general duty is set out at section 23(1) of *CFSA*:

Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency.

Section 22(2) of the *Act* provides a list of circumstances in which a child is deemed to be in need of protective services. Broadly, the circumstances can be organized into four grounds:

1. Physical abuse;
2. Sexual abuse;
3. Emotional abuse;
4. Parent or guardian is unavailable.

Each circumstance triggers the general duty to report. The specific circumstances pursuant to section 22(2) are as follows:

- (a) the child has suffered **physical harm**, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
- (c) the child has been **sexually abused** by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;
- (d) there is a substantial risk that the child will be sexually abused as described in clause (c);
- (e) a child **requires medical treatment** to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;
- (f) the child has suffered **emotional abuse**, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

- (g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;
- (h) 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 guardian does not provide, refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the condition;
- (i) the child has been exposed to, or has been made aware of, **violence** by or towards
 - i. a parent or guardian, or
 - ii. another person residing with the child,and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;
- (j) the child is experiencing **neglect** by a parent or guardian of the child;
- (k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;
- (ka) the child's only parent or guardian has died or is **unavailable to exercise custodial rights over the child** and has not made adequate provision for the child's care and custody;
- (kb) the child is in the care of an agency or another person and the parent or guardian of the child refuses or is **unable or unwilling to resume the child's care** and custody;
- (l) the child is under twelve years of age and has **killed or seriously injured another person or caused serious damage to another person's property**, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, the necessary services or treatment;
- (m) the child is under twelve years of age and has on more than one occasion **injured another person or caused loss or damage to another person's property**, with the encouragement of a parent or guardian of the child or because of the parent or guardian's failure or inability to supervise the child adequately.

Pursuant to section 22(1) of *CFSA*, substantial risk means a real chance of danger that is apparent on the evidence.

The definition of a child in need of protective services is purposely broad - in order to allow child protection to intervene at an earlier stage when problems are smaller and more likely to be remedied.

Important considerations:

- Confidentiality

Pursuant to sections 23(1) and 25A of *CFSA*, the general duty to report exists regardless if the information is confidential or privileged.

- Statutory immunity

Pursuant to section 23(2), a person who complies with the general duty to report is immune from liability, except where the reporting is done falsely and maliciously.

- Failure to report

The general duty is a mandatory legal duty. The information must be reported immediately.

Pursuant to section 23(3) of *CFSA*, any person who fails to report information indicating that a child is in need of protective services is guilty of an offence and upon summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a period not exceeding six months or to both.

No proceedings shall be instituted pursuant to section 23(3) of *CFSA* more than two years after the contravention occurred.

III. PROFESSIONAL DUTY

In addition to the general duty above, *CFSA* requires professionals who work with children, including psychologists, to immediately report any suspicion of child abuse to the appropriate agency.

In the context of the professional duty, abuse refers to abuse inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately.

The professional duty recognizes that people working closely with children have a special awareness of the signs of child abuse and places special responsibilities on professionals to identify and report suspicions of child abuse. Additionally, the higher penalties set out below reflects the perception that professionals are generally better informed about their obligation to report and have special responsibilities to children.

The professional duty is set out at section 24(2) of *CFSA*:

Notwithstanding any other Act, every person who performs professional or official duties with respect to a child, including

- i. a health care professional, including a physician, nurse, dentist, pharmacist or psychologist;
- ii. a teacher, school principal, social worker, family counsellor, member of the clergy, operator or employee of a day-care facility;
- iii. a peace officer or a medical examiner;
- iv. an operator or employee of a child-caring facility or child-care service;
- v. a youth or recreation worker,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child

- vi. has or may have suffered abuse;
- vii. is or may be suffering abuse; or
- viii. is or may be about to suffer abuse in the imminent future,

shall forthwith report the suspicion and the information upon which it is based to an agency.

In the context of the professional duty, “suffered abuse” refers to a more limited list of circumstances covered under section 22(2) of *CFSA*. They include:

- (a) the child has suffered **physical harm**, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
- (c) the child has been **sexually abused** by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;
- (e) a child **requires medical treatment** to cure, prevent or alleviate physical harm or suffering, and the child’s parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;
- (f) the child has suffered **emotional abuse**, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;
- (h) 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 guardian does not provide, refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the condition;
- (i) the child has been exposed to, or has been made aware of, **violence** by or towards
 - i. a parent or guardian, or
 - ii. another person residing with the child,
- (j) the child is experiencing **neglect** by a parent or guardian of the child.

The professional duty requires reporting where there are “**reasonable grounds**” to suspect past and/or present abuse, as well as a risk of abuse. In other jurisdictions, “reasonable grounds” refers to the information that an average professional, using normal and honest judgment, would need in order to decide to report.

In Ontario, courts have interpreted the “reasonable grounds” standard as a low threshold for reporting. In one case, the Ontario Superior Court of Justice stated that it is:

better to have a score of reports and investigations that yield no abuse, than to have a single child continue to be abused or to have other children from the same family suffer similar abuse or worse.

The “reasonable grounds” standard falls well short of the “beyond a reasonable doubt” standard used in criminal law, as well as the “balance of probabilities” standard utilized in civil proceedings. It is not necessary for a professional to be certain of the abuse to make a report.

Important considerations:

- Confidentiality

Pursuant to sections 24(3) and 25A of *CFSA*, the general duty to report exists regardless if the information is confidential or privileged. Accordingly, a psychologist is legally required to report regardless of whether the information being disclosed would otherwise be protected by psychologist–client confidentiality.

The professional duty to report prevails over any other statute, including the *Personal Health Information Act*, SNS 2010, c 41.

- Failure to report

The professional duty is a mandatory legal duty. The information must be reported immediately.

Pursuant to section 24(6) of *CFSA*, a professional who fails to report a suspicion of child abuse is guilty of an offence and upon summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a period not exceeding one year or to both, if this information is obtained in the course of their professional or official duties.

Further, a failure to report may also result in civil liability and/or disciplinary action from the Nova Scotia Board of Examiners in Psychology.

No proceedings shall be instituted pursuant to section 24(6) of *CFSA* more than two years after the contravention occurred.

Pursuant to section 24(4) of *CFSA*, the professional duty does not exempt the obligation to report information pursuant to the general duty.

- Statutory immunity

Pursuant to section 24(5) of *CFSA*, a professional who complies with the duty to report is immune from liability, except where the reporting is done falsely and maliciously or no reasonable grounds for the suspicion exist.

There is little case law related to such liability; however, Ontario courts have tended to rule in favour of reporting professionals and protect their legal immunity.

IV. DUTY TO REPORT THIRD-PARTY ABUSE

CFSA requires anyone with information indicating that a child under the age of sixteen has suffered abuse by a person other than a parent or guardian or the abuse is caused by the failure of the parent or guardian to supervise and protect the child adequate to immediately report the information to the applicable agency.

The duty to report third-party abuse is set out at section 25(2) of *CFSA*:

Every person who has information, whether or not it is confidential or privileged, indicating that a child under the age of sixteen

- (a) has or may have suffered abuse;
- (b) is or may be suffering abuse; or
- (c) is or may be about to suffer abuse in the imminent future, by a person other than a parent or guardian

shall forthwith report the information to an agency.

The duty to report third-party abuse only applies to children under the age of sixteen.

In the context of the duty to report third-party abuse, a child is abused by a person other than a parent or guardian if the child

- (a) suffers physical harm, inflicted by a person other than a parent or guardian of the child or caused by the failure of a person other than a parent or guardian of the child to supervise and protect the child adequately;
- (b) is sexually abused by a person other than a parent or guardian of the child or by another individual where the person, not being a parent or guardian of the child, with the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child; or
- (c) suffers emotional abuse, caused by the intentional conduct of a person other than a parent or guardian of the child

Important considerations:

- Confidentiality

Pursuant to section 25(2) of *CFSA*, the duty to report third-party abuse exists regardless if the information is confidential or privileged.

- Statutory immunity

Pursuant to section 25(5), a person who complies with the duty to report third-party abuse is immune from liability, except where the reporting is done falsely and maliciously.

- Failure to report

The duty to report third-party abuse is a mandatory legal duty. The information must be reported immediately.

Pursuant to section 25(3) of *CFSA*, a person who fails to report third party-abuse is guilty of an offence and upon summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a period not exceeding six months or to both.

No proceedings shall be instituted pursuant to section section 25(3) of *CFSA* more than two years after the contravention occurred.

V. CONCLUSION

CFSA requires the public to immediately report information that child is or may be in need of protective services. *CFSA* places an additional duty on professionals, including psychologists, to report suspicions of child abuse.

A failure to report may leave the child at risk of harm. Further, a professional that fails to report is liable to incur serious penalties, including fines, imprisonment, and disciplinary action by their regulator.

Professionals working with children must ensure that they do not wrongly consider privacy as a barrier to disclosing personal information about children in need of protection.

A professional who makes a report in good faith enjoys statutory immunity.

VI. IMPORTANT DEFINITIONS

“child” means a person under nineteen years of age;

“emotional abuse” means acts that seriously interfere with a child’s healthy development, emotional functioning and attachment to others such as

- i. rejection,
- ii. isolation, including depriving the child from normal social interactions,
- iii. deprivation of affection or cognitive stimulation,
- iv. inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or
- v. any other similar acts.

“neglect” means the chronic and serious failure to provide to the child

- i. adequate food, clothing or shelter,
- ii. adequate supervision,
- iii. affection or cognitive stimulation, or
- iv. any other similar failure to provide.

“sexual abuse” means

- i. the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct, or
- ii. the use of a child in, or exposure to, prostitution, pornography or any unlawful sexual practice.