

Changes to section 14 of the *Child, Family and Community Service Act (CFCSA)*

Introduction

In 2002, the *Child, Family and Community Service Act (CFCSA)* was amended to clarify the duty to report child protection concerns (section 14). The amendment provides consistency between the duty to report and what social workers are required to respond to under the Act. Part of the effect of the amendment was to remove the requirement to report circumstances where a child is harmed by a person other than the parent.

This change in reporting requirements has raised questions in some cases about the working relationship and respective responsibilities of school board employees and ministry staff. Specifically, there continues to be confusion about what must be reported, the expectations around reporting, and the roles of the two ministries in addressing child protection concerns.

To clarify these questions it is important to keep in mind that there are two sources from which responsibilities related to protection concerns in schools flow:

- The *Child, Family and Community Service Act (CFCSA)*, which sets out the statutory requirements for protecting children.
- The Trilateral Protocol Agreement: Responding to Child Abuse and Neglect. This protocol was developed to guide development of local protocols between school boards, police, and local representatives of the ministry. The purpose of local protocols is to clarify the roles of school board employees, police, and ministry social workers in collaborative work undertaken to protect children.

Many questions about what to report and appropriate responses to reports are resolved through local and regional discussions and protocols between school board and ministry staff.

However, the Ministry of Education indicates that in some cases school personnel continue to express uncertainty about their duty to report, and remain confused about responses they have received to reports. The information here is intended to provide clarification about how to respond to reports and questions from school board employees.

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Summary of the Changes to section 14 – Duty to Report

When it came into force, the wording in Section 14 of the *Child, Family and Community Service Act (CFCSA)* stated:

- (1) *A person who has reason to believe that a child*
- (a) *has been, or is likely to be, physically harmed, sexually abused or sexually exploited by a parent or other person, or*
 - (b) *needs protection under section 13(d) to (k) must promptly report the matter to a director or a person designated by a director.*

Under the *Child, Family and Community Service Amendment Act, 2002*, section 14(1) was repealed and replaced by the following in order that the wording would parallel that of the child protection workers mandate under Section 13:

A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

Q: *Why were these amendments made?*

A: The legislation was amended to provide consistency between reporting provisions and what child protection social workers are required to investigate under the Act. The amendment more clearly reflects the child protection worker's mandate to intervene. This change is consistent with the traditional scope of mandatory reporting provisions and child welfare legislation of other Canadian jurisdictions, which limit reporting to a child needing protection as defined in their respective statutes.

Q: **When is a person responsible to make a report?**

A: There is a responsibility on a person to make a report when they have reason to believe that a child needs protection. Once the report is made, the responsibility for determining if further action is required, including further investigation under the provisions of the *CFCSA*, is the responsibility of the protection social worker.

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Q: *What does “reason to believe” mean?*

A: The intent of this phrase is to ensure that anyone who has reason to believe, based on information they have received or what they have witnessed, that a child needs protection reports this to a child protection social worker.

This belief need not be certain. Whether or not the parent is actually able or willing to protect the child is an assessment that should be made by a protection social worker.

There may be some situations where the person making the report will want to seek further information from the parent before deciding if a report is required. An example of this would be to clarify a statement the child has made, or to inquire about a child's provisions such as lunch or clothes. The decision about whether the reporter needs to make further inquiries rests with the person reporting, not the child protection social worker.

Q: *How do school district employees determine the need for reporting?*

A: If a person has reason to believe that a child is being harmed by the child's parent, or by another person and the parent is unwilling or unable to protect their child, they have a duty to report.

Each situation must be evaluated based on the relevant circumstances, but it should always be kept in mind that if a person is unsure whether or not to report he or she can call a child protection office for advice. The duty to report in s. 14 sets out when a person is *required* to report. A person can voluntarily report at any time, provided they do not knowingly report false information.

The sections of the *CFCSA* that are relevant for determining duty to report are Sections 13 and 14. Section 13 (1) of the *CFCSA* is reproduced in Appendix 1 of this document.

Q: *Does this amendment place more onus on school district employees to decide if a child's circumstances meet any of grounds described in s.13 before reporting? In particular, do school district employees need to investigate whether parents are unwilling or unable to protect a child before reporting suspected or alleged abuse involving a third party?*

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A: No, the amendments were not intended to place any onus on the public to assess or investigate any child protection concerns that are made known to them.

Local protocols between school boards, the Ministry of Children and Family Development, and law enforcement agencies are important for clarifying roles and responsibilities for reporting and responding to child protection issues.

A set of guidelines for independent schools, published in “Supporting our Schools: A Guide for Independent School Personnel Responding to Child Abuse”, is also important for this purpose.

The ways that Ministry staff, teachers, other professionals and the public work together to protect children have not changed as a result of the amendments to the *CFCSA*.

Q: What can school personnel expect when they make child protection reports?

A: Reporters will be asked for all relevant information about the child and the child’s family. This will include details about the circumstances and the reporter’s reasons for making the report. The information provided is used by the social worker to assess whether or not the report requires investigation, and not every report will be investigated. The reporter can ask the social worker to provide the results of their assessment.

Q: What if person making the report does not agree with the social worker’s assessment or response to their report?

A: It is the responsibility of the social worker under the *Child, Family and Community Service Act* to assess and determine the most appropriate response to each report received. Concerns about this process that cannot be resolved with the social worker can be referred to the social worker’s supervisor. Information about the MCFD complaint review process is available from local offices.

Q: Can someone be held liable for making a report under the *CFCSA*, if it turns out upon investigation by a social worker that the child does not need protection?

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A: No, there are two sections of the *CFCSA* that prevent this from happening:

Section 14 (5) states that: *No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.*

Section 101 states that: *No person is personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of a power, duty or function conferred by or under this Act.*

On the other hand, it is an offence under the *CFCSA* if a person fails to make a report when they have reason to believe that a child needs protection under Section 13, which is quoted above.

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Appendix 1: Section 13, CFCSA

Section 13 (1) of the *CFCSA* describes the circumstances under which it is reasonable to believe that a child may be in need of protection. Section 13 states that:

A child needs protection in the following circumstances:

- (a) if the child has been, or is likely to be, physically harmed by the child's parent;*
- (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;*
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;*
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;*
- (e) if the child is emotionally harmed by the parent's conduct;*
- (f) if the child is deprived of necessary health care;*
- (g) if the child's development is likely to be seriously impaired by a treatable conditions and the child's parent refuses to provide or consent to treatment;*
- (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;*
- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;*
- (j) if the child's parent is dead and adequate provision has not been made for the child's care;*
- (k) if the child has been abandoned and adequate provision has not been made for the child's care;*

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- (l) if the child is in the care of the director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.*

- (1.1) For the purpose of subsection (1) (b) and (c) and section 14 (1) (a) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been or is likely to be,*
 - (a) encouraged or helped to engage in prostitution, or*
 - (b) coerced or inveigled into engaging in prostitution.*

- (2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe*
 - (a) anxiety,*
 - (b) depression,*
 - (c) withdrawal, or*
 - (d) self-destructive or aggressive behaviour.*