

A Member's Duty to Report Under the *Child Youth and Family Services Act, 2017*

All members should be familiar with their duty to report suspicion of child abuse or neglect to the Children's Aid Society (CAS). Members who fail to meet this duty can face charges under the *Child, Youth and Family Services Act, 2017* (CYFSA), Section 125 and a finding of professional misconduct by their professional college.

What is the Duty to Report?

The duty to report is a legal duty that arises under the CYFSA. Under the CYFSA, everyone has a duty to report "reasonable grounds to suspect" that a child may be in need of protection as set out in Section 125 (1) of the CYFSA. This duty applies regardless of whether or not one is a professional named in the *Act* or is acting in their professional capacity.

What triggers the Duty to Report?

It is generally triggered by suspicion that a child has suffered neglect, physical, emotional, or sexual harm, or is at risk thereof. Section 125 (1) of the CYFSA sets out the list of grounds that would trigger the duty to report:

1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise, or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising, or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise, or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising, or protecting the child.
3. The child has been 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.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
 - 4.1 The child has been sexually exploited as a result of being subjected to child sex trafficking.

4.2 There is a risk that the child is likely to be sexually exploited as a result of being subjected to child sex trafficking.

5. The 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*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behaviour, or
 - v. 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.
7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v 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 *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting 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.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v 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 *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. 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 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*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise the rights of custody 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.

12. The 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 treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The 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. 2017, c. 14, Sched. 1, s. 125 (1); 2020, c. 25, Sched. 1, s. 26 (6).

How is the Duty to Report fulfilled?

The duty to report is **direct**. Members must report their suspicions of abuse or neglect directly to their local Children's Aid Society (CAS) and cannot rely on anyone else, including an administrator, to make that call for them. The duty to report is **immediate**. The CYFSA requires that the report be made "forthwith". Members cannot, for example, wait for the following day to report. The CAS has after-hours intake workers, so calls can and should be made at any time of the day that a member becomes aware of the issue giving rise to the duty to report. The duty to report is **ongoing**. Subsequent grounds to suspect abuse or neglect should also be reported to the CAS, even if the member has previously reported concerns about the same student or family.

What if the suspicion turns out to be wrong?

You do not need proof that the protection need exists in order to report it to the CAS. It is **not** your role to investigate the situation to determine whether or not the protection need does in fact exist and any attempts by you to do so could interfere with the CAS investigation, not to mention breach your obligation to report to the CAS **immediately**. The duty to report overrides confidentiality and your decision to report is protected under the CYFSA if you did not act without reasonable grounds or maliciously (CYFSA, s. 125 (10)). This means that your duty to report applies even in situations where a student makes a disclosure to you in confidence or asks you not to tell anyone what they have told you. If you are in doubt about whether your duty to report has been triggered, you can call the CAS for advice. You should document and keep a record of any such call you make.

Failure to Report is an Offence Under the CFSA

For individuals who perform professional or official duties with respect to children, including all members of ETFO, it is an offence under the act if the duty to report is breached **and** the information that triggered the suspicion was obtained in the course of a member's professional or official duties (CYFSA, s.125(9)). Members charged with a breach of the duty to report under the CYFSA, if convicted, can face a fine of up to \$5,000.

Failure to Report is Professional Misconduct

Breaching one's duty to report under the CYFSA is also considered to be professional misconduct by the Ontario College of Teachers (OCT) and the College of Early Childhood Educators (CECE). Members who breach their duty to report could face a complaint at their college and discipline for professional misconduct.

Professional Advisories from the OCT and CECE

Both the colleges have recently issued Professional Advisories on the duty to report child abuse or neglect. The advisories are intended to provide further guidance to members in exercising their professional judgment to recognize situations that give rise to their duty to report. Members are expected to review and comply with the applicable advisories. They are online at:

- [Professional Advisory – Duty to Report](#), CECE
- [Professional Advisory – Duty to Report](#), OCT

Please note, however, that your legal duty to report is defined by the CYFSA and not by the advisories. Other resources regarding the duty to report are available at the [Ontario Association of Children's Aid Society](#).

For further information contact your local ETFO president or Professional Relations staff in PRS at 416-962-3836 or 1-888-838-3836

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