

## APPENDIX A

### POLICY SHSM 001 – DEALING WITH ABUSE AND NEGLECT OF STUDENTS

#### CHILD AND FAMILY SERVICES ACT – SECTION 72

##### DUTY TO REPORT

###### Duty to report child in need of protection

**72.** (1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

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 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.

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (1) and the following substituted:**

3. The child has been sexually molested or sexually exploited, including 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 molestation or sexual exploitation and fails to protect the child.

**See: 2008, c. 21, ss. 3 (1), 6.**

4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.
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. 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 i, ii, iii, iv or v of paragraph 6 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.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 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 i, ii, iii, iv or v of paragraph 6 and that 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 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, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. 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.
12. 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.
13. 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. 1999, c. 2, s. 22 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 72 is amended by the Statutes of Ontario, 2008, chapter 21, subsection 3 (2) by adding the following subsections:**

**Reporting child pornography**

(1.1) In addition to the duty to report under subsection (1), 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 a regulation made under clause 216 (c.3). 2008, c. 21, s. 3 (2).

**Seeking out child pornography not required or authorized**

(1.2) Nothing in this section requires or authorizes a person to seek out child pornography. 2008, c. 21, s. 3 (2).

**Protection of informant**

(1.3) No action lies against a person for providing information in good faith in compliance with subsection (1.1). 2008, c. 21, s. 3 (2).

**Identity of informant**

(1.4) Except as required or permitted in the course of a judicial proceeding, in the context of the provision of child welfare services, otherwise by law or with the written consent of an informant, no person shall disclose,

- (a) the identity of an informant under subsection (1) or (1.1),
  - (i) to the family of the child reported to be in need of protection, or
  - (ii) to the person who is believed to have caused the child to be in need of protection; or
- (b) the identity of an informant under subsection (1.1) to the person who possessed or accessed the representation or material that is or might be child pornography. 2008, c. 21, s. 3 (2).

**Retaliation against informant prohibited**

(1.5) No person shall dismiss, suspend, demote, discipline, harass, interfere with or otherwise disadvantage an informant under this section. 2008, c. 21, s. 3 (2).

See: 2008, c. 21, ss. 3 (2), 6.

**Ongoing duty to report**

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if he or she has made previous reports with respect to the same child. 1999, c. 2, s. 22 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (3) and the following substituted:**

**Ongoing duty to report**

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) or to believe that a representation or material is, or might be, child pornography under subsection (1.1) shall make a further report under subsection (1) or (1.1) even if he or she has made previous reports with respect to the same child. 2008, c. 21, s. 3 (3).

See: 2008, c. 21, ss. 3 (3), 6.

**Person must report directly**

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on his or her behalf. 1999, c. 2, s. 22 (1).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (3) and the following substituted:**

**Person to report directly**

(3) A person who has a duty to report under subsection (1) or (2) shall make the report directly to the society, a person who has a duty to report under subsection (1.1) shall make the report directly to any organization, agency or person designated by regulation to receive such reports, and such persons shall not rely on any other person to report on their behalf. 2008, c. 21, s. 3 (3).

See: 2008, c. 21, ss. 3 (3), 6.

**Offence**

(4) A person referred to in subsection (5) is guilty of an offence if,

(a) he or she contravenes subsection (1) or (2) by not reporting a suspicion; and

(b) the information on which it was based was obtained in the course of his or her professional or official duties. 1999, c. 2, s. 22 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 72 is amended by the Statutes of Ontario, 2008, chapter 21, subsection 3 (4) by adding the following subsections:**

**Same**

(4.1) A person is guilty of an offence if the person fails to report information as required under subsection (1.1). 2008, c. 21, s. 3 (4).

**Same**

(4.2) A person is guilty of an offence if the person,

(a) discloses the identity of an informant in contravention of subsection (1.4); or

(b) dismisses, suspends, demotes, disciplines, harasses, interferes with or otherwise disadvantages an informant in contravention of subsection (1.5). 2008, c. 21, s. 3 (4).

See: 2008, c. 21, ss. 3 (4), 6.

**Same**

(5) Subsection (4) applies to every person who performs professional or official duties with respect to children including,

(a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;

(b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;

(b.1) a religious official, including a priest, a rabbi and a member of the clergy;

(b.2) a mediator and an arbitrator;

(c) a peace officer and a coroner;

(d) a solicitor; and

(e) a service provider and an employee of a service provider. 1999, c. 2, s. 22 (3); 2006, c. 1, s. 2; 2010, c. 10, s. 23; 2014, c. 11, Sched. 6, s. 2 (1).

**Same**

(6) In clause (5) (b),

“youth and recreation worker” does not include a volunteer. 1999, c. 2, s. 22 (3).

**Same**

(6.1) A director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence under subsection (4) by an employee of the corporation is guilty of an offence. 1999, c. 2, s. 22 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6.1) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (5) and the following substituted:**

**Same**

(6.1) A director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence under subsection (4) or (4.1) by an employee of the corporation is guilty of an offence. 2008, c. 21, s. 3 (5).

See: 2008, c. 21, ss. 3 (5), 6.

**Same**

(6.2) A person convicted of an offence under subsection (4) or (6.1) is liable to a fine of not more than \$1,000. 1999, c. 2, s. 22 (3).

**Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6.2) is repealed by the Statutes of Ontario, 2008, chapter 21, subsection 3 (6) and the following substituted:**

**Penalty**

(6.2) A person convicted of an offence under subsection (4), (4.1), (4.2) or (6.1) 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. 2008, c. 21, s. 3 (6).

See: 2008, c. 21, ss. 3 (6), 6.

**Section overrides privilege**

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion. R.S.O. 1990, c. C.11, s. 72 (7); 1999, c. 2, s. 22 (4).

**Exception: solicitor client privilege**

(8) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. R.S.O. 1990, c. C.11, s. 72 (8).

**Conflict**

(9) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 78 (2).

**Section Amendments with date in force (d/m/y)**

1999, c. 2, s. 22 (1-4) - 31/03/2000

2004, c. 3, Sched. A, s. 78 (2) - 1/11/2004

2006, c. 1, s. 2 - 23/02/2006

2008, c. 21, s. 3 (1-6) - not in force

2010, c. 10, s. 23 - 3/06/2010

2014, c. 11, Sched. 6, s. 2 (1) - 31/08/2015

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2008, chapter 21, section 4 by adding the following section:**

**Action by organization receiving report of child pornography**

**72.0.1** (1) An organization, agency or person that obtains information on child pornography under subsection 72 (1.1) shall review the report and, if it reasonably believes that the representation or material is or might be child pornography, it shall report the matter to a society or a law enforcement agency, or to both as necessary. 2008, c. 21, s. 4.

**Annual report**

(2) The organization, agency or person shall prepare and submit to the Minister an annual report with respect to its activities and actions relating to information it obtains on child pornography, and the Minister shall submit the report to the Lieutenant Governor in Council and then table the report in the Assembly if it is in session or, if not, at the next session. 2008, c. 21, s. 4.

See: 2008, c. 21, ss. 4, 6.

#### **Section Amendments with date in force (d/m/y)**

2008, c. 21, s. 4 - not in force

#### **Duty of society**

**72.1** (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director. 1999, c. 2, s. 23 (1).

#### **Definition**

(2) In this section and sections 73 and 75, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f), (f.1) or (h). 1999, c. 2, s. 23 (1).

#### **Section Amendments with date in force (d/m/y)**

1999, c. 2, s. 23 (1) - 31/03/2000; 1999, c. 2, s. 23 (2) - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

#### **Duty to report child’s death**

**72.2** A person or society that obtains information that a child has died shall report the information to a coroner if,

- (a) a court made an order under this Act denying access to the child by a parent of the child or making the access subject to supervision;
- (b) on the application of a society, a court varied the order to grant the access or to make it no longer subject to supervision; and
- (c) the child subsequently died as a result of a criminal act committed by a parent or family member who had custody or charge of the child at the time of the act. 2006, c. 24, s. 1.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 24, s. 1 - 19/10/2006