

# CHILD VICTIMS OF ABUSE AND NEGLECT




New  Nouveau  
**Brunswick**  
C A N A D A

# P R O T O C O L S

# Child Victims of Abuse and Neglect Protocols



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**Child Victims of Abuse and Neglect Protocols**

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## 1.0 Interdepartmental Statement

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In recognition of the widespread and pervasive nature of child abuse, in December 1989 the Ministers of Health and Community Services, Justice, Solicitor General, Education and Income Assistance accepted the first edition of "Guidelines for Protecting Child Victims of Abuse and Neglect".

Amendments have been made to the *Criminal Code* and the *Family Services Act* since the writing of the original Guidelines. In addition, considerable knowledge and experience has been gained in the area of child abuse and neglect. An awareness of the extent of the pervasiveness of child abuse was highlighted by the Miller inquiry.

Subsequent editions of the Child Victims of Abuse and Neglect Protocols in 1995 and 2004 have maintained the same purpose: to ensure that all efforts in New Brunswick to protect children from abuse and neglect are effective and sensitive to the needs of children. These provincial protocols have been developed primarily for employees of the Departments of Education, Justice, Public Safety, Health and Wellness, Training and Employment Development, and Family and Community Services.

To achieve this end, in New Brunswick, professionals and community agencies will work together collaboratively to prevent and intervene in cases of child abuse. Regional Child at Risk Teams (CART) provide a community-based structure to ensure a coordinated response to the needs of children at risk for abuse and neglect.

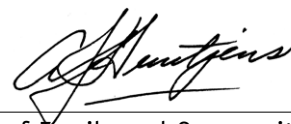
Other non-governmental institutions and professionals have been included in these protocols because of the important role and services that they provide to child victims of abuse and neglect. In addition, organizations and professional groups who have not been specifically identified in these protocols may, from time to time, discover situations of abuse/neglect in the course of their duties. It is anticipated that these

protocols will assist organizations and professional groups in the delivery of services to children.

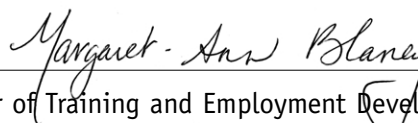
To enhance and ensure this commitment to work cooperatively in addressing the problem of child abuse and neglect, these Protocols are updated regularly to ensure they contain current information and reflect best practices.

The content of the new protocols reflects government's continued commitment to ensuring that all children in New Brunswick are protected and fully valued as members of society. We need to make concerted efforts to ensure that all children are nurtured in their development.

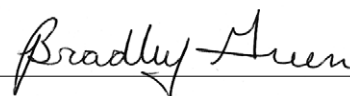
We endorse these Protocols for Child Victim of Abuse and Neglect and consider it essential that all professionals who operate under our Departments adopt these protocols and henceforth make them an essential part of their regular operations. It is our sincere hope that these protocols will continue to provide the direction that has been sought regarding the management of child abuse and neglect and will enable us to fulfill our on-going responsibilities to all children in the province.



Minister of Family and Community Services



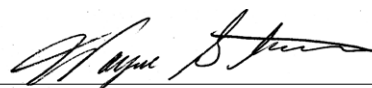
Minister of Training and Employment Development and  
 Minister Responsible for the Status of Women



Minister of Justice



Minister of Health and Wellness



Minister of Public Safety



Minister of Education



### **1.1 Introductory Comments**

It is recognized that child abuse and neglect can take many forms including emotional maltreatment. These protocols are established to help professionals be alert to signs of child abuse for mandatory reporting to child protection services and reporting to police. It should be noted that these protocols are not intended to provide standards for professional practice, but rather to elaborate on the multidisciplinary approach which is necessary when providing supportive services to abused or neglected children and their families.

Multidisciplinary refers to more than one professional discipline working together collaboratively to prevent and intervene in cases of child abuse and neglect. This will require information sharing and open communication among professionals.

It must be emphasized that parents are responsible for protecting their children, and intervention by the Minister of Family and Community Services is normally necessary only where the parents have been unable to fulfill this responsibility. The focus of the child protection worker is to support the parents and the child, (where appropriate), in eliminating future abuse.

Pursuant to the *Family Services Act*, the Minister of Family and Community Services or his designate must assess/investigate all reports that a child may be in need of protection and, if necessary, take further action to protect the child. The purpose of the Minister's intervention is to protect the child or children involved. If the Minister determines that the child is not in need of protection, the Minister's mandate to intervene ceases.

The police are responsible for criminal investigations. Physical abuse of a child, sexual abuse of a child, and withholding the necessities of life from a child are all forms of criminal conduct. The purpose of police intervention is to enforce the criminal law.

The role of Child Protection Services in responding to allegations of child abuse is to ensure that the victim, and other children, will be protected from

further harm from the perpetrator and to ensure the victim receives appropriate treatment and support services.

The duty to report suspected cases of child abuse and neglect (mandatory reporting) is contained in Section 30 of the *Family Services Act* and applies to everyone, including professionals, who encounter abuse and neglect in carrying out his or her duties.

Except for the relationship between a solicitor and the solicitor's client, the professional relationship that had a traditionally accepted degree of confidentiality attached has not been seen as absolute in recent court cases regarding child abuse. The court decisions have ruled that a child's right to protection outweighs the confidentiality aspects of the relationship with a professional. However, reporting must remain a limited communication between only those persons and agencies that need to know. Release of information to unauthorized persons, rumours and gossip violate the individual's rights and can open the door to lawsuits.

Each department, agency, or institution is invited to supplement these protocols with its own additional standards that reflect the specific area of responsibility and milieu in which the organization operates.

### **1.2 Prevention of child abuse and neglect**

Prevention is not a new term in the field of human services, but only recently has it been getting attention as a viable intervention strategy. It is based on the belief that we are capable of preventing problems from occurring both on an individual basis (direct intervention) or on a wider community-oriented basis.

Prevention measures are crucial in the long run for eliminating child abuse and neglect. Because child abuse victims are more likely than others to become abusive parents, preventing victimization now affects future generations. Like other responses to child abuse, prevention measures need to be integrated to be effective.

There are two distinct types of preventive intervention - the individually oriented

intervention and the systems approach. In the first instance, the focus is on equipping the person with improved coping skills in order to prepare them to handle anticipated crises or other stressful events; this type is known as secondary prevention. In the systems or macro approach, sometimes referred to as primary prevention, the goal is to raise the general awareness of society to problems that may exist and to provide information, policies or legislation that will reduce the incidence of abuse or neglect, and to promote positive growth and development.

The “systems approach” tends to be educative and informative in nature and is geared to the general public. It has been described by the phrase “don’t let it happen”. “Individually oriented” prevention has been described by the phrase “if it looks like it’s about to happen, catch it in time”. Essentially, this type of prevention involves the identification of high risk populations, early diagnosis and prompt treatment in order to prevent a potential incident of abuse or neglect.

It is desirable in the area of prevention that an interdisciplinary approach be used in the identification of the problem and determination of the goal in order to provide an enriched approach to problem resolution and a wider choice of options.

It is appropriate for different agencies to assume the leadership role in various types of preventive intervention, and there should be a conscious identification of lead responsibilities and of those who will play a contributing role.

In New Brunswick, the mechanism to carry out this interdisciplinary approach is established through joint leadership between all departments signatory to the Protocols. Because of the numerous initiatives underway in violence prevention, many teams came together to address specific recommendations.

### **1.3 Statement of principles**

A sensitive approach to the problem of child abuse requires a commitment to certain guiding principles. The principles that serve as the foundation for these guidelines are as follows:

- Children have basic rights and freedoms no less than those of adults.
- Children have the right to live a life free from abuse and neglect.
- Child abuse and neglect is a serious social problem with short and long term implications to the victims, their families and society as a whole.
- Parents have responsibility for the care and supervision of their children.
- Families have a right to the least invasion of privacy.
- The importance of the family unit should not supersede the respect for the well-being of the individual members that comprise it.
- Child victims are not responsible for the violence perpetrated against them.
- Effective responses for children and their families require co-operation and co-ordination among service providers.
- Sharing information is necessary to make informed decisions and must be done in accordance with the **Right to Privacy in such a way as to protect the privacy of the individuals involved.**
- Treatment and support resources for victims, their families, and offenders are components of an effective multidisciplinary response.
- Communities share responsibility for protecting children.



## 2.0 Defining Child Abuse and Neglect

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### 2.1 Defining child abuse

**A Child**, for the purposes of the *Family Services Act*, is any person who is actually or apparently under the age of majority (19 years). Although services can be provided under this *Act* to any child, the mandatory reporting and intervention in suspected child abuse and neglect situations is limited to children under the age of sixteen (16) and to disabled children under the age of nineteen (19). Under the *Criminal Code*, offenses related to child abuse are age specific with child victims generally being considered under the age of eighteen (18).

**Child Abuse** can include Sexual Abuse, Physical Abuse, Physical Neglect, and Emotional Maltreatment. All types of abuse identified are subject to intervention under the *Family Services Act*.

Child Abuse can occur in a number of different ways. Following are some examples of child abuse:

**Sexual Abuse** refers to any sexual acts involving a child and a parent, caretaker, any person in a position of trust, and/or any other person. Two forms of sexual abuse are recognized: physical and non-physical sexual abuse. Physical sexual abuse is described when a person actually sexually exploits the child for the perpetrator’s own gratification, as in sexual assault, incest, fondling, and intercourse. Non-physical sexual abuse is when a person entices a child to perform masturbation while the offender watches or the offender performs sexual acts for the child to

watch. Exhibitionism, masturbation of another, pornography, voyeurism, and such are examples of non-physical sexual abuse.

**Physical Abuse** refers to all actions resulting in non-accidental physical injury or harm. Such abuse is distinguished from reasonable use of force by its severity and its inappropriateness for the age of the child, and its lack of healthy corrective purpose regarding the child’s behaviour. This may include severe beatings, burns, human bites, broken bones, internal injuries, superficial bruises and welts, and in some cases, death.

**Physical Neglect** refers to acts of omission on the part of the parent/caretaker. This includes failure to provide for the child’s basic needs and appropriate level of care with respect to food, clothing, shelter, health, hygiene, and safety, as determined by the community’s minimum level of care standards.

**Emotional Maltreatment** refers to both emotional abuse and emotional neglect of the child. Emotional abuse includes overt rejection, criticism, and excessive demands of performance for a child’s age and ability. Emotional neglect refers to the failure of the parent/caretaker to provide adequate psychological nurturance necessary for a child’s growth and development.

**Passive abuse** occurs when an individual recognizes a child as being abused and/or neglected and fails to report the abuse to authorities. An example of a passive abuser would be the parent who takes no action when he/she is aware the child is being sexually molested, thereby allowing the abuse to continue.

**Exposure to domestic violence** refers to when a child is living in a situation where there is domestic violence. It includes children seeing, hearing or being aware of violence perpetrated by one parent figure against another parent figure. (Adapted from training with Dr. Peter G. Jaffe and publications <http://www.lfcc.on.ca/>).

The above definitions provide a framework for the intervention by responsible agencies and individuals in situations of child abuse. It should be noted that sexual abuse, physical abuse, and physical neglect are considered to be criminal offenses.

## 2.2 Myths and facts about child abuse

Myth: Child abuse can be divided into two categories, physical and sexual.

*Reality: In addition to physical and sexual abuse, child abuse includes emotional maltreatment and neglect.*

Myth: Infants are at the least risk for fatal child abuse.

*Reality: Infants are the highest risk group for fatal cases of child abuse. They are three times more likely to die from injuries than children over the age of two.*

Myth: There are no common characteristics of a physically abusive parent.

*Reality: There are common characteristics that identify physically abusive parents including low impulse control and a history of being physically abused as a child. These characteristics should alert professionals or caregivers to the potential for abuse. Studies support the finding that child abusers do not fall under a specific psychiatric diagnostic classification.*

Myth: Abusive parents are usually unemployed and have incomes below the poverty line.

*Reality: Demographic studies indicate that child abuse is not specifically related to race, religion, age, education, or socio-economic status. It occurs in all segments of our society. Previous explanations of child abuse being caused by ignorance, immaturity, and poverty alone are incorrect.*

Myth: Demeaning and humiliating children is not a form of abuse.

*Reality: Parents who are unable to meet the child's needs for affection and attention may emotionally abuse their child through rejection. They frequently have unrealistic expectations and goals for their children. When children fail to meet their standards they are punished and/or ridiculed.*

Myth: Emotionally abused children have no trouble developing trusting relationships.

*Reality: Children who are repeatedly emotionally*

*abused frequently become emotionally impaired adults. Many become incapable of forming lasting and meaningful attachments to others.*

Myth: Ninety percent of sexual abuse victims are girls.

*Reality: The Badgley report (1984) estimates that 1 in 2 females and 1 in 5 males are victims of an unwanted sexual act before the age of nineteen.*

Myth: In cases where a step-father abuses his step-daughter the mother is never aware of sexual abuse occurring between her partner and her daughter.

*Reality: Some mothers of incest victims have some awareness, consciously or unconsciously, that the incest exists.*

Myth: In the majority of sexual abuse cases the abuser is a stranger to the child.

*Reality: In the vast majority of cases the sex offender is known to the child. The offender is someone who the child may see frequently and who has easy access to the child.*

Myth: Child sexual abuse offenders are motivated solely from the perspective of sexual gratification when they become involved with children.

*Reality: Sexual offenders are considered to engage in sexual behaviour with children primarily for the satisfaction of non-sexual needs. Their primary motivation is usually a need for power and control over another person. The young are especially vulnerable.*

Myth: Physical evidence of child sexual abuse is often lacking because children are not examined promptly after disclosure.

*Reality: Even though a physical examination may be performed directly after disclosure, the likelihood of finding physical evidence of sexual abuse is minimal.*

Myth: Children who have been victims of sexual abuse will not suffer long term effects as adults.

*Reality: There is an abundance of research and knowledge in this area. Most sexual abuse victims will suffer some long term effects from their abuse.*

### **2.3 Potential High Risk Situations for Infant Abuse**

This list represents situations that may place infants at high risk of being abused.

- Premature infant
- Infant with congenital abnormality
- Developmentally challenged child
- Colicky infant
- Very ill infant or child
- Twin or multiple birth
- Behaviour indicative of lack of infant/maternal attachment
- Unwanted pregnancy
- Depression related to pregnancy
- One parent wanted either abortion or to relinquish the child but did not
- Difficult delivery
- Separation of mother and infant for health reasons of either parent of the child
- Mother does not understand or accept changes in her life which caring for an infant necessitates
- Parents who are over-concerned with the baby's sex, or voice a lot of concern about how they will cope with an infant
- Parent who makes no/few preparations for infant
- Parent who avoids touching or looking at the infant and does not visit the neonatal unit
- Single parents or young mothers under the age of 20

### **2.4 Physical Abuse Indicators**

#### **Ingestions:**

- Result from carelessness, neglect, ignorance or forced ingestion; has been given inappropriate food, drink or drugs

#### **Burns:**

- Cigar or cigarette burns
- Glove or sock-like burns or doughnut shaped burns on buttocks and/or genitalia indicative of immersion in hot liquid
- Rope burns on arms, legs, neck or torso
- Patterned burns that show the shape of the item used

#### **Bruises or welts:**

- On face, lips, mouth or large areas of the body such as back, buttocks or thighs
- In various stages of healing
- In unusual patterns, clustered or reflective of the instrument used

#### **Lacerations and Abrasions:**

- To mouth, lip, gums, eyes, ears, hands, fingers
- To external genitalia

#### **Human Bite Marks:**

- Anywhere

#### **Fractures:**

- Skull, jaw or nose fractures
- Spiral fractures of the long arm or leg bones
- Multiple fractures
- Fractures in various stages of healing
- Any fracture in a child under two

#### **Head Injuries:**

- Absence of hair in patches due to pulling
- Subdural haematomas as revealed by a C-T Scan

#### **Dislocations:**

- Of shoulder or hip sockets possibly caused by pulling
- Evidence of repeated injury
- Wasting of subcutaneous tissue

## 2.5 Sexual Abuse Indicators

- A sexually transmitted disease, gonococcal infections being the most likely
- Recurrent vaginal infections in child under 12 years of age
- Symptoms of soreness, bleeding or discharge from the vaginal area
- Severe psychosomatic symptoms
- Emotional disturbances
- Difficulty with bowel and bladder control
- Delayed onset of menstruation or other menstrual difficulties
- Frequent headaches, stomach aches, apparent over exaggeration of minor illnesses
- Pregnancy, especially in early teen years
- Poor personal hygiene
- Sudden weight gain or extreme weight loss
- Trauma to the breasts, buttocks, lower abdomen, thighs, genitals or rectal area
- Torn, stained or bloody underclothing
- Semen around mouth, genitalia or on clothing
- Difficulty or pain upon sitting down or walking
- Pain when going to the bathroom
- Precocious, promiscuity

## 2.6 Physical Neglect Indicators

- Failure to thrive
- Malnourished
- Untreated cuts, sores or illness
- No immunization
- No preventative medical care
- Dehydration
- Clinical signs of deprivation which improve with a more nurturing environment: cradle cap, severe diaper rash, impetiginous lesions, diarrhea, vomiting, anaemia, acute or recurrent respiratory involvement

- No laboratory evidence of systemic disease or abnormality to account for initial growth failure
- Lags in development (emotional and cognitive), underdeveloped
- Has pale, pasty appearance and lack of muscle tone
- Consistently dressed in inappropriate clothing for the weather or clothing that is torn, dirty
- Has dull eyes, listless appearance
- Tired, lethargic
- Mentally or physically handicapped
- Lice infested, skin shows signs of impetigo or other infections
- Poor dental care

## 2.7 Emotional Maltreatment Indicators

- Physical signs of emotional maltreatment are often less tangible than other forms of child abuse. The child's appearance may not indicate or even suggest the extent of his or her difficulties. Clothing, nutrition and general physical care may be adequate. However, facial expression and body carriage may reveal feelings of sadness, lack of confidence, timidity, confusion, discouragement or just-under-the surface anger.
- Psychosomatic complaints
- Failure to thrive with no organic cause
- Child may not look sick

Garbarino (1986) indicates there are five forms of emotional maltreatment, which include:

- Rejecting - behaviours which communicate or constitute abandonment.
- Terrorizing - threats with extreme or vague but sinister punishment; stimulating fear, setting unrealistic expectations, and/or stating unpredictable threats.
- Ignoring - to be psychologically unavailable to the child, ranging from a lack of sustained attention to a "barrier of silence".

- Isolating - preventing the child from taking advantage of normal opportunities for social relations.
- Corrupting - mis-socialization of the child through reinforcement and encouragement of aggression, substance abuse, sexuality, delinquent and criminal activity, etc.

### **2.8 Child Behavioural Indicators of Abuse and Neglect**

- Child states having been sexually abused
- May reverse story after original disclosure
- Seems afraid of parents or other adults
- Apprehensive in the face of adult disapproval
- Very concerned for the parent
- Does not turn to parent for support and assurance
- Shows extremes in behaviour, aggression, withdrawal
- Seems sad, anxious, poor self-esteem
- Poor social relationships with peers
- Alcohol or drug abuse
- Overly compliant, passive, avoiding confrontation
- Sexually aggressive behaviour with others
- Detailed and age-inappropriate understanding of sexual behaviour
- Arriving early at school and leaving late, with few absences
- Running away from home, delinquent behaviour
- Self-destructive behaviour, phobias
- Consistently hungry and thirsty, begs for or steals food, brings no lunch to school
- Shows inappropriate adult or infantile behaviours
- Suicidal
- Sleep disorders
- Lack of response and eye contact

### **2.9 Indicators of Abuse and Neglect by Parent/Person in a Position of Trust**

- Offers illogical, unconvincing, contradictory or no explanation of child's injury
- Undue delay in obtaining medical help
- Refuses consent for further diagnostic studies
- Failure to visit or inquire about the child after admission
- Over-reacts or under-reacts
- Gives a history of repeated injury
- Critical of the child and angry with him/her for being injured
- Gives no indication of feeling guilt or remorse regarding the child's condition
- Uses discipline inappropriate to child's age, condition
- Indicates poor understanding of normal child development
- Seems suspicious for some unknown reason; bizarre or strange behaviour
- Changes physician frequently and moves from one area to another
- Has little motivation or skill to effect changes in his/her life, does not learn from past experiences
- Shows irritation at being asked about the development of the child's symptoms or about other problems
- Shows more concern about what will happen to him/herself rather than the child
- Is preoccupied with himself/herself and the concrete things of life; is competitive with his/her child/children
- Single parent, without adequate support system
- Chaotic home life with little evidence of regular, healthful routines, disorganized and disordered
- Alcoholism and drug abuse
- Presence of family violence



- Person who is mentally challenged
- May have fanatical beliefs
- Geographical and social isolation
- Overcrowding in the home
- Reconstituted families
- Depression, psychosis
- Refuses all offers of help; ignores the child

### 3.0 Vision for a collective response

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The vision of the Minister’s Working Group on Violence Against Women is **“That all New Brunswick families must live in a secure, nurturing environment free of abuse and violence.”** The protection of children is clearly delineated in legislation and with clear actions explicitly included within departmental intervention guidelines.

Many advocate that the protection of children goes beyond the boundaries of government. In order to move towards a more preventive approach and early detection and intervention, the protection of children must become a concern for every member of society. How we integrate this in the fabric of society is by collectively recognizing each of our roles in ensuring children’s right to live in healthy, happy and nurturing homes free of violence. Reporting abuse or suspicions of abuse makes a significant difference in every child’s life. The following is a Vision of a Collective Response that is meant to engage individuals and communities to be part of the solution. Our collective compassion and support can make a world of difference in assisting children who are being abused and to facilitate healing.

This is what we would find in a highly sensitized, child-supportive community. It is a Vision of how we can come together to support a child who may be disclosing abuse, who may be seeking help in very subtle ways, or may be suffering in silence. This Vision sets a foundation from which to enhance existing responses while engaging the system, communities and individuals to recognize the power of working together to help children who have been abused or neglected.

#### 3.1 Ensuring every child’s safety

- A child must be protected from abuse. Each member of society sees it as his/her responsibility to report abuse or suspicions of abuse. Individuals know what to do and do not hesitate to act.
- Professionals are well trained in recognizing the signs and symptoms of abuse. They work from a multi-disciplinary approach to ensure that needs are being met. They view the community as a resource and work towards developing appropriate supports for children and their families.
- Government recognizes that all employees need to be sensitized and know how to respond to situations of abuse. On-going training is provided.
- When abuse is reported, efficient and compassionate social workers and police take control of the situation and remove the child from any immediate danger. Procedures are followed as prescribed in the *Family Services Act*.
- When abuse involving adults in the school system is suspected, children are protected by the *Education Act’s* requirement of mandatory reporting by professionals.
- The child’s personal safety is assured. The non-offending parent is also supported and kept informed throughout the investigation.

#### 3.2 Compassionate helpers understand:

- People are supportive and compassionate.
- Educators are informed and provide support and understanding to the child.
- The investigation proceeds as quickly and efficiently as possible.
- The child is kept informed of what is happening and what can be expected.
- Every effort is made to maintain continuity in case workers or professionals involved.

- Permanency planning is at the forefront and appropriate resources are channelled to achieve that goal.
- The child knows his/her workers' names and how to reach them.
- The child's positive relationships are maintained and encouraged.
- The child is assisted by the appropriate professional for every event that is required throughout the process, such as testifying in court.

### ***3.3 Crisis support for the child and the non-offending parent and/or caregiver:***

- The child is connected to the appropriate helper to deal with the trauma of the abuse or neglect, the disclosure and the changes in his/her life as a result.
- The non-offending parent has access to appropriate support to deal with the situation.
- The offender is also provided with opportunities to re-habilitate.
- New people coming into the child's life, such as foster parents or caregivers, are brought in carefully, paying attention to how the child is reacting and adjusting.

### ***3.4 Letting the child maintain appropriate levels of control:***

- The child is encouraged to participate in his/her case planning and to continue making decisions in all appropriate dimensions of his/her life.

### ***3.5 Planning for the future:***

- The child's ability to cope is gauged by parents/caregivers. They recognize changes and work at keeping the lines of communication open and moving forward. They support and understand the challenges the child faces.
- Professionals safeguard a bright and optimistic future for the child by ensuring a safe, nurturing, and stable environment for as long as the child is in care.

### ***3.6 When times get tough:***

- Those involved in the child's life are attentive and take the time to listen.
- The child is assisted in working out issues and concerns or to simply talk about his/her concerns.
- The child is assisted in accessing additional supports when needed.
- The child is provided with an environment conducive to develop a healthy self-esteem. The child is encouraged and reassured.
- Adults in the child's life understand that it's not easy to be a child under the best of times, so they give just a little more because this one has been hurt.

## 4.0 Joint Investigations

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### 4.1 General

Joint investigations involving both the police and Child Protection Services should be conducted in all suspected cases of child sexual abuse, physical abuse, and serious neglect. The objectives of joint investigations are: the planning of interviews, the sharing of relevant investigative findings, and the avoidance of repeat interviews. These activities should be commenced simultaneously using a collaborative approach.

Independent investigations in intra-familial abuse situations should only occur in exceptional circumstances such as in instances where criminal activity not related to the abuse or neglect is to be investigated.

It is to be noted that joint investigations do not include a situation where the police are requested by the Department of Family and Community Services to ensure physical safety of family members or Department of Family and Community Services employees in the course of investigative activities.

Police and Child Protection Services personnel responsible for conducting joint child abuse investigations should be knowledgeable in the area of child abuse interventions and their respective roles and responsibilities.

The protection of the child should be of primary concern to both the police and Child Protection Services.

Pursuant to the *Family Services Act*, the Minister of Family and Community Services or his designate must investigate all reports which cause the Minister to suspect that a child may be in need of protection and, if necessary, take further action to protect the child.

Under the *Criminal Code*, the police are responsible for criminal investigations. Physical abuse of a child, sexual abuse of a child and withholding the necessities of life from a child are all forms of criminal activity. The purpose of police intervention is to initiate the criminal investigation process including gathering sufficient evidence and recommending charges where warranted to the Crown Prosecutor.

### 4.2 Receipt of Report of Allegations of Child Abuse

In their respective roles, both Child Protection Services and the police may receive reports concerning allegations of child abuse.

A report received by the Department of Family and Community Services shall be assessed to determine if a child is in need of protection.

When a report of suspected child abuse is made to the Department of Family and Community Services, it is transferred to a child protection investigator for further action. The child protection investigator will contact the police immediately in all cases of sexual abuse and other child abuse cases where criminal activity is suspected.

When police receive a call concerning allegations of a child being abused or neglected, the police will report the allegation to Child Protection Services. The police and Child Protection Services will determine whether a joint investigation should be initiated.

Prior to commencing the investigation, the police and the child protection investigator should meet to discuss and plan the investigation strategies.

### 4.3 Investigation Process

When a cooperative approach is taken, the following factors are critical to a successful joint investigation:

- sharing information with the objectives of protecting the child and obtaining sufficient information to determine if charges are warranted.
- ensuring the coordination of agency roles in order to reduce trauma to the child and increase the effectiveness of the investigation.
- developing case management strategies throughout the investigative process.
- ensuring that support to the victim and/or the victim's family is provided as required.

Investigation and assessment of suspected child abuse are considered a high priority by both police and Child Protection Services. It is important to work collaboratively in order to meet the requirements of both the *Criminal Code* and the *Family Services Act*. Intervention should be rapid and planned from the commencement of the investigation.

The police investigator and the child protection investigator will work as a team throughout the investigation process. However, they shall have access to consultation with their respective supervisors at any stage of the investigation.

It should be noted that time frames for criminal investigations and child protection investigations may vary. It is important for members of the investigation team to be cognizant and responsive to the restrictions imposed on each service.

In most instances, the Department of Family and Community Services is required to complete an investigation within 45 days, if there is evidence that a child's security or development is in danger. In most cases, if substantial evidence is not obtained that could lead to legal action within 45 days prolonging the investigation would be considered an unwarranted invasion of privacy. Under the *Family Services Act*, the findings and conclusions of the investigation are to be communicated to the parent; the child, if appropriate; and to the alleged perpetrator.

### 4.4 Joint Investigation Interviews

Interviews will be conducted as soon as possible upon receipt of the initial report of alleged abuse. In most instances the complainant, the child, the siblings, the non-offending parent and the suspect will be interviewed as follows:

#### 4.4.1 The Complainant

- In cases of alleged child abuse a detailed interview with the person who has reported the abuse should be conducted, as determined by the investigative team. The complainant should be advised the matter will be reported to the police if the report was made directly to Child Protection Services, and similarly the police will indicate that Child Protection Services will be informed.
- Both the police and the child protection investigator will check their records regarding the complainant, alleged suspect, the child, the child's family, and there shall be a sharing of relevant information between the police and Child Protection Services from these records.
- The team will determine the sequence of interviews and the need to substantiate the initial allegation of abuse on a case by case basis.

#### 4.4.2 The Child

- The police and child protection investigator, together, shall see the child as soon as possible. The team should exercise extreme sensitivity when interviewing or seeking to interview the child.
- The team will decide if and when a medical examination should occur. Where recent intercourse or violence has occurred, the medical examination should be arranged immediately.
- Interviews with all alleged child victims should be videotaped. In child sexual abuse investigations, interviews with the victims shall be videotaped.
- Videotaped interviews should be conducted at the earliest opportunity after the alleged abuse has been reported. It will be videotaped at the

Child Protection Services office or at another facility where videotaping equipment is installed. The child should be informed that interviews will be videotaped.

- It may be necessary for a short preliminary interview to be held with the child in a neutral setting such as a school prior to conducting a full videotaped interview.
- When using a neutral setting such as a school for a preliminary interview, the child's rights to privacy should be safeguarded as much as possible. Factors to consider in determining a location for the initial interview should include:
  - *where and how disclosure occurs;*
  - *where the abuse occurred;*
  - *where the victim will feel safe;*
  - *where interruptions will be kept to a minimum;*
  - *reaction of the non-offending parent(s);*
  - *where the alleged suspect is located.*
- Interviews with the child victim should be conducted jointly with either the police or child protection investigator acting as the primary interviewer. The determination of who will act as the primary interviewer should be based on the skills and expertise of the interviewer in dealing with child abuse victims. The interviewer should be prepared to testify in court as to his or her qualifications and procedures chosen for use in the interviews. The investigator, who is not the primary interviewer, should only act as an observer/recorder of the interview.
- It is preferable for the child to be interviewed alone but if the child requests, a parent or other supportive adult may be present. The accompanying person should be instructed to be a non-active participant, other than to offer support to the child.
- The purpose of the interview as well as the respective roles of the police and child protection worker should be explained to the child at the outset of the interview.

- Age appropriate language should be used when interviewing a child. Any written statement from the child shall be verbatim.
- The team should carry out a full investigation even though a child may recant his/her story subsequent to the original statement. Such an event is not unusual, particularly, in cases of child sexual abuse. It is for this reason that all written or taped statements of the child are extremely important.

#### 4.4.3 Siblings

Siblings of the child victim should also be interviewed by the team. The purpose of these interviews is to determine:

- if the sibling is also a victim of abuse;
- if the sibling has knowledge of other possible victims;
- if the sibling can corroborate the victim's account;
- if the sibling may be at risk following the victim's disclosure or in any subsequent family crisis.

The siblings should be interviewed privately and separately. The same degree of care and attention given to the child victim should be exercised during these interviews. Written statements and/or audiotapes or videotapes must be made of the sibling statements. In the course of the interview, if it is determined that a sibling is also a victim, the guidelines above for interviewing the child should be followed.

#### 4.4.4 Non-Offending Parent/Guardian

A non-offending parent/guardian should be interviewed as soon as possible after the victim and his/her siblings. It is preferable for the interview to occur before the child victim and his/her siblings discuss their interviews with the non-offending parent. During the interview the following should be ascertained by the team:

- a determination of the non-offending parent's awareness of the abuse;
- an assessment of the family's functioning and family interrelationships;

- an assessment of the family's ability to support the victim as well as family relationships and patterns of behaviour;
- an assessment of the non-offending parent's relationship with the suspect, including spousal relationship, degree of dependence or autonomy, and the presence of violence or fear of the suspect;
- a determination of what resources will be required to assist the family in protecting the child and preparing for the events that follow disclosure;
- an assessment of the capacity within the family to protect the child. If the non-offending parent/guardian is unable to provide for ongoing safety of the child, to determine what appropriate options are available.

#### 4.4.5 The Suspect

Initial contact with the suspect should occur after completing interviews with the child victim, siblings and non-offending parent(s). Where possible, the suspect should not speak to the victim or other family members before being interviewed.

- It is a police function to investigate a criminal offence and to identify the suspect. It is the police role to interview the suspect alone. Faced with the statement of the child victim, it is not uncommon for the suspect to admit to the offence in the first interview.
- As soon as possible after the interview, the police will disclose to the child protection worker what was learned from the suspect. The police will use discretion in disclosing information which is unrelated to child abuse or neglect.
- Care must be taken by those involved not to make promises or threats to the suspect which could jeopardize the admissibility of any statement in court.
- In situations where it has been determined that abuse may have occurred and the non-offending parent is able to protect the child, the suspect may be asked to leave the home

rather than placing the child under protective care.

#### 4.5 Immediate Protection of the Child

- Both the social worker and police have a duty to ensure the protection of the child.
- Immediate action should be taken to ensure the alleged offender has no unsupervised access to the child until otherwise indicated.
- In intra-familial situations, the police/child protection investigator team should attempt to remove the offender from the home instead of the child. Methods which may be used are:
  - voluntary agreements by the suspect to leave;
  - laying of a criminal charge with a "no contact" order as a condition of release before hearing;
  - an application for a warrant under the *Family Services Act* for the removal of the offending person until the application for a Protective Intervention order can be heard;
- In intra-familial abuse situations, the decision to remove the offender instead of the child must also be based on the assessment of the non-offending parent's capacity to protect the victim and siblings, where applicable, from contact by the offender. Likewise, any decision to allow the victim and the offender to remain together prior to court proceedings must be based on solid assurances that the child will not be pressured or further victimized by the offender.

#### 4.6 Assessment and Intervention Plan

After interviews with the victim, siblings and non-offending parent(s) in intra-familial situations and based on the police interview with the offender, the child protection investigator will begin a psycho-social assessment of the family members and family functioning. On the basis of this preliminary assessment, which may include further contact with the offender after the initial police interview, the child protection worker will identify a management plan for each case.

The plan should take into account the needs of the victim, and other family members, the services to be provided, the desirability of criminal court or family court interventions, and the prognosis for treatment of the offender, the victim, and other family members. Where appropriate, the child protection worker will ensure a mental health and medical assessment are completed as part of the overall assessment.





## 5.0 Department of Family and Community Services Intervention Guidelines

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### 5.1 Introduction

In New Brunswick, child and family services legislation, policy and programs recognize that the family is the basic unit of society and should be supported and maintained whenever possible.

Under the authority of the *Family Services Act*, the Department of Family and Community Services coordinates and, with the assistance of various groups and agencies, delivers a wide spectrum of programs for children and their families. These programs range from education, prevention and support to protection and adoption, and include assistance to families while ensuring that the fundamental rights and freedoms of children are upheld.

The *Family Services Act*, proclaimed in 1981, provides the legislative framework for the development and delivery of services to New Brunswick’s children and families. The *Act* opens with a preface which:

- affirms that the family is the basic unit of society and its well-being is essential
- acknowledges the fundamental rights and freedoms of children
- recognizes that parents are responsible for their children and that intervention and removal of a child from parental care must be considered in accordance with the *Act*

and, that in such a case, the Minister should provide care, as nearly as possible, as though the parent.

The preface of the *Act* acknowledges the necessity of social services “to prevent or alleviate the social and related economic problems of individuals and families”, and presents the *Act* as the legal mechanism whereby the province assures the protection of individuals and families.

In all their decisions, representatives of the Minister must be guided by what is seen to be in the “best interests” of children.

### 5.2 Administrative Structure

The Department of Family and Community Services is mandated under the *Family Services Act*, to provide protection services to children in New Brunswick. Child Protection Services are provided to children under the age of 16 and to disabled persons up to the age of 19.

Under the *Family Services Act*, it is mandatory to report any situation where the security or development of a child is suspected to be in danger. These reports are to be made to the Access and Assessment Unit in the Department of Family and Community Services.

The reports will be investigated under the Child Protection Services which are delivered through regional offices of the department. The delivery of child protection services is based on the “*Child Protection Services Practice Standards and Guidelines*”, which are to be adhered to in all regions.

In the event that a referral is made, it is important that professionals be familiar with the Child Protection Services within their region. For this purpose, government departments and professional groups are encouraged to contact the regional office in order to become familiar with how their referral will be received and followed-up.

The department is multi-faceted, where staff in program/service areas other than Child Protection Services may, in the course of their work, encounter situations in which child abuse or neglect is suspected. All departmental staff have the same obligation to report suspicions to Child Protection Services.

Following the Koster-Hillier Report in 1996 the Minister established community-based Child At Risk Teams (CART). The purpose of CART is to enhance cooperation and collaboration amongst partners in the provision of coordinated services to children at risk for abuse and neglect. Staff from the Department of Family and Community Services who serve on CART are integral to the regional teams.

### **5.3 Reporting Responsibility**

Referrals of child protection situations can be made during normal working hours with the Access and Assessment Unit, in each region.

Referrals of child protection emergency situations after normal working hours or on weekends will be received through the "After Hours Emergency Social Services" (AHES).

Staff working in all program/service areas shall:

- familiarize themselves with the possible indicators of child abuse and neglect
- make a referral to Child Protection Services immediately upon identifying a situation in which child abuse or neglect is suspected
- consult the local Access and Assessment Unit when unsure if the situation warrants a referral, this may lead to a formal referral
- participate in the investigation and management of the case, when indicated by *Child Protection Services Practice Standards and Guidelines*.
- have the option to request feedback on the outcome of the investigation if not directly involved.

**The identity of all referral sources is protected under the *Family Services Act*, other than when disclosure is ordered through the course of judicial proceedings.** However, it would be conducive to the intervention and to the child protection worker's initial contact if the professional referral source voices his/her concerns to the family and notifies them of the referral to Child Protection Services.

In order to fulfill the legislative requirements of the *Family Services Act* that require the mandatory reporting of suspected abuse and neglect situations to Child Protection Services of the Department of Family and Community Services, the following procedures will be followed:

### **5.4 Procedures for Referral and Follow-up**

1. A referral to Child Protection Services shall be made immediately upon identifying a situation in which child abuse/neglect is suspected.
2. A verbal referral made to Access and Assessment, Child Protection Services, may include some or all of the following information:
  - Child's complete name and birth date
  - Name and address of parent/guardian
  - Details of suspected abuse/neglect
  - Name of the person who suspected the abuse/neglect.
3. A verbal request should immediately be followed by a written referral, whenever possible, by using the **Child Abuse/Neglect Referral Form**.

4. Staff who are not child protection workers must not interview the child or the child's family regarding the abuse/neglect. This is the role of the Child Protection Worker or the police. Staff should remain responsive, supportive and open if the child wishes to continue talking.
5. When a referral to Child Protection Services is to be made, the referral source may advise the parent or the guardian unless prior knowledge of the referral might place a child in imminent danger or jeopardize the investigation. In this case, Child Protection Services or the police shall contact the parent.
6. Staff who send a referral to Child Protection Services are encouraged to permit their name to be revealed as the source of referral.
7. Reports of sexual abuse, physical abuse and neglect may also be made to the police.

### **5.5 Child Protection Service Delivery**

Child Protection Services is a basic and specialized child welfare service which carries a delegated responsibility to intervene and assist any child who is considered to be abused or neglected. In New Brunswick, this service is offered under the mandate of the Department of Family and Community Services under the authority of the *Family Services Act* and is provided through local offices by employees delegated to carry out child protection work.

The basic responsibility for the care and protection of children rests with the parents, or in the absence of parents, with the care providers. When parents and care providers fail to meet this responsibility, government in representing the public interest, has established provisions to come to the aid of children in need. Such provisions include the availability of therapeutic and supportive services to families, alternate care arrangements for children, and termination of parental rights and responsibilities when deemed necessary.

Child protection social workers may also intervene in child abuse situations which occur outside the family. The mandate to protect children remains

the same as in intra-familial abuse, but the process of intervention will usually be different. In extra-familial abuse situations, the parents normally are fulfilling their parental responsibilities and the effort of the child protection social worker is to support the parents and the child in eliminating future abuse and assist the family to obtain counselling services, where appropriate.

In intra-familial abuse and neglect situations, child protection social workers have a dual role to play. The balance between the two roles is a very delicate one. Because they represent the authority of the state itself, they are prepared to use this authority when it is considered necessary to protect a child. The child protection social workers' primary commitment is to the child, but they are also obligated to use their helping role skills in order to assist parents to recognize inappropriate parental behaviour, and to help them make the necessary changes in their behaviour pattern. Although the social workers' statutory authority is useful in this endeavour, they will rely mostly on their professional training as helping persons in working with the family. Special skills are required in view of the fact that on many occasions the client is involuntary, and there may be a certain amount of client fear, hostility, anxiety and distrust.

In addition to direct intervention in abuse and neglect situations, Child Protection Services has a responsibility to cooperate with other community and professional resources in offering preventative, protective and supportive services to families and children. Child abuse and neglect is a shared responsibility and all professionals are committed to working collaboratively to prevent and intervene in these situations.

The Department of Family and Community Services is ultimately responsible to assume the lead for the assessment and investigation and the case management function in child protection issues.

#### **5.5.1 Assessment**

- The Access and Assessment social worker will conduct a preliminary assessment to determine if the child's security or development may be in danger.

- When anonymous referrals are made, as much detailed information as possible needs to be gathered from the caller and other sources.
- The Access and Assessment social worker will determine whether there has been prior departmental contact with the family.
- Where there is reason to believe that the security or development of a child is threatened, the situation shall be investigated immediately, in accordance with the *Child Protection Services Practice Standards and Guidelines*.
- If it is determined that the referral does not warrant an investigation, the Access and Assessment social worker will advise the referral source of that decision and may suggest other options, including referral to another agency.
- Although there may be insufficient information to open an investigation from a referral, the referral source shall be encouraged to report any future concerns regarding the child.
- All referral sources will be informed that some feedback may be provided, if requested.
- **The identity of all referral sources is to be protected under the *Family Services Act*, other than when disclosure is ordered through the course of judicial proceedings.**
- If a referral received by the After Hours Emergency Social Services (AHES) indicates that a child may be in immediate danger, the AHES social worker will contact the regional on-call social worker for immediate investigation.
- Contacting immediately the person, if known, who identified the suspected abuse/neglect (if the child's security or development is in imminent danger).
- Going to the child's location and assessing the immediate need for child protection services. Under the *Family Services Act*, police assistance may be requested by the worker/supervisor for safety purposes and keeping the peace, if deemed appropriate.
- Referring all sexual abuse; and, physical abuse and serious neglect when there are reasonable grounds to believe that a criminal offence has been committed, for joint investigation with the police.
- Establishing appropriate working linkages with various criminal justice personnel, including: victim services, Crown prosecutor, probation, police and parole.
- Placing the child under Protective Care if the child is in immediate danger and the child cannot be otherwise protected.
- Notifying the parents immediately once the child has been placed in the care of the Minister.
- Interviewing the parents and other appropriate family members as soon as possible.
- Arranging for an immediate medical examination in cases of suspected physical and sexual abuse. In non-urgent situations the need for a medical examination is based on other health concerns.
- Making a decision within five working days as to whether or not the child remains in care or is returned home.
- Providing the professional referral source with the results of the investigation and intended course of action following the completion of the investigation.
- Encouraging the referral source to report any additional concerns regarding the child.

### 5.5.2 Investigation

Once it has been determined that a referral warrants an investigation, it is assigned to a social worker who will be responsible for carrying out the investigative functions. These include:

- Gathering information from courts, police, corrections, schools, day care, and public health and other agencies, as appropriate.

- Providing the parent, the child and the alleged perpetrator with the findings and conclusions of the investigation in accordance with the *Family Services Act*.

### 5.5.3 Case Management and Treatment

A Permanency Planning Committee has been established in each region to assist in the process of case management and treatment.

- Child Protection Services involves the making of many decisions which can be crucial to the lives of the families receiving the services. Many of these decisions can and must be made by the worker alone, particularly in emergency situations where the worker will be requested to act independently. However, major decisions should not be made without at least consulting the supervisor.
- Once the investigation phase is completed and the decision is made to refer the case for ongoing services, a formal documented intervention plan must be developed by the child protection social worker and supervisor according to departmental standards. Case plans should be goal oriented, behaviourally specific, time limited and focused on the best interests of the child and family preservation. Every effort should be made to involve the family in developing the case plan.
- Consultation with community professionals shall also be considered in the determination of the plan. Professionals may be participants in the development of the case plan and, if so, shall be made aware of how their role fits with other professionals providing services to the child and his/her family.
- When a child protection social worker believes a child's security or development is in danger, the social worker, subject to policy, may apply for one of the following court orders as part of the case plan: Protective Intervention Order, Place of Safety, Supervisory Order, Custody Order, or Guardianship Order. A Custody Agreement may also be reached outside of court.

- Treatment and support services are to be provided to family members to enhance family functioning. Treatment may include individual, group, and family therapy and psychiatric and psychological assessments. Support services may include the provision of homemaker services, family support workers, and day care.
- The primary goal is the reunification of the family if children or other family members have been temporarily removed from the home and where there is a good prognosis for the family to regain an appropriate level of functioning.
- The frequency of contact between the social worker and the family under Child Protection Services will vary according to the risk level of the case. Procedures are outlined in the *Child Protection Services Practice Standards and Guidelines*.

### 5.5.4 Case Closure

- Each case will be assessed for closure by the child protection social worker and the supervisor based on the family's ability to ensure the child's security and development.
- The reason for termination will be clearly communicated to the family and documented on file. Professionals involved in the case plan shall also be advised of the decision to close the case.
- If there are any questions by community professionals about the decision or action taken by Child Protection Services, the matter is to be discussed with the child protection social worker and his/her supervisor. If the matter remains unresolved, the specific concerns are to be documented and forwarded to the Regional Program Delivery Manager of Family and Community Services.

### 5.5.5 Abuse in a Community Placement Resource or Institution

- Legislation requires that all suspicions of abuse and neglect be immediately reported to the Minister of Family and Community Services. These reports will normally be made through the Access and Assessment Unit of the Department of Family and Community Services.

- Unless it is determined that children currently may be at risk, incidents which have occurred in the past may not need to be investigated. Incidents which have occurred in the past and which fall under the category of sexual abuse, serious physical abuse and serious neglect, and which will not be investigated by the Minister, shall be reported to the police for possible criminal investigation.
- Any investigation undertaken by the Minister will be carried out according to procedures already set forth in the *Child Protection Services Practice Standards and Guidelines*, and these protocols which include joint investigations. In all instances, it needs to be determined if the child is in immediate danger and if further action is necessary in order to protect the child. As part of this responsibility, Child Protection Services will assess if the caretaker is in collusion with the alleged abuser, and/or if corrective measures have been taken by the institution.
- It is recommended that in regions where there is an institution, a regional mechanism, such as an official liaison, should be developed to respond to institutional reports. The responsibilities of the liaison person can include educating staff about the issue of child abuse/neglect, about the legal obligation to report and about facilitating the referral process. It can also include dealing with issues which may arise following a report.
- Upon completion of an investigation, the findings and conclusions of the investigation will be reported to the parents of the child, in addition to the victim, the alleged perpetrator, the referral source and the community placement resource.

#### **5.5.6 Non-professional conduct by school personnel**

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined

as, “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years”.

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education’s Policy 701 on its policy website.

Where the allegation pertains to a member of the school personnel and there are sufficient grounds to warrant investigation by the school district, the school district investigator prior to commencing an investigation should contact the child protection worker to request that the school district investigator(s) be granted observer status for relevant interviews conducted by Family and Community Services. To avoid multiple interviews of the child (victim) it is recommended that whenever possible the school district investigator be allowed observer status during interviews of children when there are situations that involve both Family and Community Services and Education investigations.

#### **5.6 Foster Parents and Children’s Group Care Facilities Staff Members**

Foster parents and group care facility staff members are important resources for children in care of the Minister of the Department of Family and Community Services. They provide care for children who may be in placement temporarily or for a prolonged period of time. Foster parents and group care facility staff members are important in the lives of child victims of neglect/abuse because

of their sensitivity to the needs and concerns of these children. They are in an ideal situation to ensure these children receive as much continued protection as possible.

The following procedures apply to all foster parents and group care facility staff members, including those serving any child or youth up to the age of majority, who is a child in care, a child with special needs, or a young offender.

### 5.6.1. Administrative Structure

Every foster parent or group care facility staff member shall:

- become knowledgeable about the indicators of child abuse/neglect
- report any suspicion or complaint of neglect/abuse to Child Protection Services regardless if the alleged perpetrator is an employee of the agency or facility or a friend
- report to Child Protection Services any child neglect/abuse situations they are aware of in the community
- not face any administrative or other sanctions when they take action to report a suspicion or complaint of neglect/abuse.

### 5.6.2 Procedures for Referral and Follow-up

1. Inform the child's social worker immediately when:
  - a child who has just been admitted to care shows symptoms that appear to be related to neglect/abuse
  - a child, who periodically returns to his/her parents for temporary visits, shows symptoms that would indicate neglect/abuse which originally required the child's transfer from the parents' care
  - through the day-to-day care of the child, they are aware of possible neglect/abuse components which were not previously known from the child's past experiences
  - the child exhibits signs of sexual abuse where the existence of such abuse was not identified prior to the child coming into care

- aware of possible neglect/abuse that relates to siblings of the foster child who are not in care
  - are aware of possible neglect/abuse that occurred in previous foster or adoptive homes or facility placements of the child.
2. The child's social worker shall take immediate action when a foster parent or group care facility staff member reports a suspected neglect/abuse of a foster child where there is perceived danger to the foster child, other foster children or siblings of the foster child.
  3. The social worker shall take such information under advisement and shall follow the appropriate procedures where such reports indicate that the situation is not of extreme seriousness or where the report relates to information already known. The child's social worker shall notify the Department of Public Safety where the child is a young offender in open custody.
  4. The child's social worker shall give a report to the foster parent or group care facility staff member on what action has been initiated and what further role the foster parent or group care facility staff member can play in providing the necessary protection for children. Where a child is a young offender in open custody, a copy of the report will also be given to the Department of Public Safety.
  5. The foster parent or group care facility staff member can discuss with the social worker when they do not receive a report back or where there is a question or dissatisfaction with the response received. If this discussion does not resolve the problem, the foster parent or group care facility staff member can discuss the matter with the social worker's supervisor or the Program Manager.



### ***5.7 Early Childhood Development Programs (Day Care, Early Intervention, Headstart and Other Early Childhood Development Programs)***

Staff in day care, early intervention programs, headstart and other early childhood development programs provide support services to families and children, and are ideally situated to play a strong role in the prevention, identification and referral of child abuse and neglect situations.

Because children who participate in these programs are very young and have a trust relationship with the staff, they will share information with the staff about themselves. Staff persons are in a good position to note those children who are possible victims of abuse and neglect. Further, the staff of the facility are probably the ones who, next to the parents, spend the most time with the children and come to know the children well.

In order to help staff of these programs to exercise their trust relationship with the child and to properly discharge their statutory obligation in the reporting of child abuse/neglect matters, the following procedures are to be implemented in each program.

#### **5.7.1 Administrative Structure**

- The Child Victims of Abuse and Neglect Protocols shall be made available to all staff of early childhood development programs.
- All staff must familiarize themselves with these protocols, including the indicators of child abuse/neglect, definitions of child abuse and the procedures for referral and follow-up.
- The operator of a program must be responsible for arranging the training and upgrading of staff about child abuse/neglect and their legal obligation to report; and facilitating referrals to Access and Assessment, Child Protection Services.
- The operator/director shall ensure Child Abuse Referral Forms are available on site.

- Staff of an early childhood development program have a personal obligation to report suspected abuse and neglect.
- Staff may consult with the operator or director of the program to discuss the procedures to follow in filing a report.
- When unsure if the situation warrants a referral, consult with the local Access and Assessment unit; this may lead to a formal referral.
- Operators and directors shall not screen the referrals of staff.
- Where a staff person makes a report in opposition to the operator's view, the staff person shall not be subjected to any negative consequences or sanctions.
- Information related to any child abuse allegation/investigation shall be kept confidential, not to be discussed with board of directors, staff members (not associated with the care of the child), other parents, or members of the public. Staff working directly with the child may be given information on a need-to-know basis.

#### **5.7.2 Procedures for Referral and Follow-up**

1. Suspicion of abuse and neglect of a child is the legal requirement for mandatory reporting. Reports are to be made immediately to Access and Assessment, Child Protection Services of the Department of Family and Community Services.
  - If the incident of child abuse is suspected to have occurred by an employee while the child is receiving services within the identified program, the parent/guardian must also be contacted.
  - If a staff person is suspected of abusing children while they are receiving services within the identified programs, the matter is to be referred to Child Protection Services. **This procedure must be followed** even if the situation has been resolved internally by the Operator or the Board of Directors, in consultation with the Early Childhood Services

- Coordinator. Following a review of the referral, Child Protection Services shall be responsible to determine if an investigation is necessary or if the police are to be contacted.
- If the incident of child abuse is suspected to have occurred by a third party (not an employee) while the child is receiving services within the identified program, the parent/guardian must also be contacted.
  - In certain neglect situations, (poor hygiene, inadequate clothing, etc.), it is recommended that the referral source first contact the parents about the situation. Failure on the part of the parents to take corrective action would justify a full report to Access and Assessment or the Child Protection Case Worker if the family has one.
2. A verbal referral to Access and Assessment, Child Protection Services shall include, where possible:
    - Child's complete name and birth date
    - Parent/guardian's name and address
    - Details of suspected abuse/neglect
    - The name of the person who suspected the abuse/neglect
  3. The verbal referral shall be followed by a completed **Child Abuse/Neglect Referral Form**.
  4. The referral source shall maintain an accurate record of the suspected abuse/neglect. Accurate records are necessary should they be required to give evidence in Court, this should include:
    - when it was noticed
    - what behaviors, or characteristics were noticed
    - the time and the date the referral was made to Access and Assessment, Child Protection Services
    - to whom the report was made
    - the time and the date the Child Protection Worker responded to the referral
  - any comments that the child voluntarily shared with the staff person
  - date and time consultation was held with the operator or director.
5. Staff persons of the program shall not interview the child. This is the role of Child Protection Services or the police. However, staff should remain responsive, supportive and open if the child wishes to continue talking. All reports of sexual abuse, physical abuse and neglect may also be made to the police.
  6. A social worker from Child Protection Services, upon presenting credentials identifying himself/herself as a designated person acting on behalf of the Minister of Family and Community Services, can remove and/or interview a child without parental consent, regardless of the source of the initial referral. It is the social worker's responsibility to contact the parents when appropriate.
  7. A staff person may be present during the interview if the child has requested this. This staff person is expected not to participate, but rather to act as a passive supporter for the child.
  8. Staff working in early child development programs shall participate in the investigation and management of the case where deemed appropriate and /or when indicated by program standards or regional policy.
  9. The social worker determines if there is enough information to conduct an investigation and if police should be contacted.
  10. Where there are no grounds to investigate, the social worker may make recommendations to the early childhood program for possible follow-up action including what to tell the child/parent.
  11. The social worker is responsible to notify the parents and to contact the police where it is determined there is enough information to conduct an investigation.



## 6.0 Department of Justice and Office of the Attorney General Intervention Guidelines

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### 6.1 Introduction

The following protocols have been prepared to assist justice professionals in responding to child abuse and neglect situations. Careful adherence to these protocols will ensure that abused and neglected children are identified, so that they will receive appropriate services.

The establishment of a multidisciplinary approach by all professionals responsible for the investigation, prosecution, delivery, and co-ordination of services to abused children will help alleviate this serious social problem.

Protocols for all professionals have been established and reference should be made to the various sections of this document to understand the roles and responsibilities of each profession.

Child abuse cases, because of their complexity, are among the most difficult for our laws and courts

to address in both criminal and civil contexts. There are often complex evidentiary, procedural or constitutional issues involved in child abuse cases. An appropriate response requires skill and coordination by many professionals. These cases are very stressful for all concerned. Often the greatest challenges arise in intrafamilial cases, where the victim and the offender have social, emotional, and economic ties. They have relationships that continue throughout the legal process and will exist when it is over.

The criminal law plays an important role in our society through the protection of the public and its application may result in the incarceration of offenders. The criminal justice process can also generate significant psychological benefits for victims by providing vindication or affirmation that they are not to blame. This is particularly true in cases of child sexual abuse where the victim must reveal intimate details of sexual activity that have allegedly occurred with a person in a position of trust or authority. The criminal justice system also has an important role in providing access to treatment for sex offenders who often deny their acts until being convicted of an offence.

No one system can by itself “solve” the problem of child abuse, particularly child sexual abuse. However, the use of the criminal justice system to its fullest extent must be an important part of the overall strategy for dealing with child sexual abuse.

The coordination and use of both social and legal interventions is important to minimize unnecessary interference with or disruption of the child victim, to help create a safe environment in which the child can recover, and to provide maximum opportunities for the control and treatment of the offender.

The issue of abuse may also be dealt with as a civil matter in family court. In some cases there are simultaneous investigations or proceedings in relation to both child protection and criminal matters. Cooperation and coordination is critical in these cases.

The following protocols have been developed to emphasize a multidisciplinary team approach

focusing on the roles and responsibilities of justice professionals in the investigation, prosecution, and delivery of services to victims and abusers. The multidisciplinary approach commences with the joint investigation of cases by the police and child protection services and continues until the case is disposed of by the courts. The role of Correctional Services in responding to both victims and accused is also addressed.

In the child protection hearing, the paramount consideration is the **“best interests” of the child** and the burden of proof is on a civil law balance of probabilities. Thus, evidence, which would be inadmissible in criminal proceedings, may be admissible at a child protection hearing, if relevant to the child’s **“best interests”**. As well, this criterion of the best interest of the child should be considered in all decisions relating to child abuse.

These protocols have been developed to assist professionals to better respond to all situations of child abuse including: intrafamilial, extrafamilial and institutional abuse situations.

## **6.2 Intervention Guidelines for the Justice System**

### **6.2.1 General**

The *Family Services Act* states: “any person who has information causing him or her to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused, shall inform the Minister of Family and Community Services of the situation without delay.”

Both police and Child Protection Services are responsible for investigating cases of suspected child abuse. Under normal circumstances, these investigations should be conducted jointly involving both a police officer and a child protection investigator.

Child abuse includes sexual abuse, physical abuse, and neglect. The criminal justice system must be involved in all investigations of sexual abuse, physical abuse and serious neglect whenever there are reasonable grounds to believe that a criminal offence has been committed.

### **6.2.2 Mandatory Reporting of Child Abuse/Peer Reporting**

The *Family Services Act* requires mandatory reporting of suspected cases of child abuse to the Department of Family and Community Services and applies to everyone including criminal justice personnel. Failure of a professional to report a **suspicion** of child abuse to Family and Community Services is an offence under the *Family Services Act*.

The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship, except for the privilege which attaches to the relationship between solicitor and client. Any professional person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence. A “professional person” is defined in the legislation and includes any person who, by virtue of his or her employment or occupation, has a responsibility to discharge a duty of care toward a child.

Justice personnel may, by virtue of their involvement in the administration of the criminal justice or family court systems, receive information which causes them to suspect that a child has been abused. It is possible that the information obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is unknown to the employee. However, the suspicion could also involve a colleague, co-worker, friend or other associate.

The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments or agencies, even if the perpetrator is alleged to be an employee of that department or agency.

Justice personnel who have information which causes them to suspect that a child has been abused or otherwise ill-treated must report the suspicion immediately and directly to the Department of Family and Community Services. Prior to referral, personnel who report the incident should not attempt to make a subjective

determination as to whether or not the allegation is true or false. Mere suspicion is the legal requirement for mandatory reporting.

When a complaint has been referred by justice personnel to the Department of Family and Community Services for investigation, the employee will, as soon as possible, advise his or her immediate supervisor of the fact and the nature of the complaint. The supervisor shall report the incident within the proper line of authority of the department or agency.

When the information obtained by an employee includes allegations of criminal activity, the employee, after notifying the Department of Family and Community Services, will also advise the appropriate local police agency of the fact of the complaint and its nature as well as the referral having been made to the Department of Family and Community Services for investigation. The employee will inform his or her immediate supervisor that the matter was referred to the police for investigation.

Justice personnel should be aware that, if they fail to report suspicions of child abuse, they are subject to prosecution under the *Family Services Act*. The Minister of Family and Community Services also has the discretion to report the failure to comply with the legislation to any professional association responsible for regulating the professional activity of that person. The *Family Services Act* allows the Minister to require a professional association to cause an investigation to be made into the failure to report suspicions of child abuse.

**\* For the section on Policing Services (receiving a complaint, police investigation process, police based victim assistance program, etc) please refer to the Public Safety section of the protocols.**

### 6.2.3 Non-professional conduct by school personnel

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined

as, “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years”.

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education’s Policy 701 on its policy website.

### 6.2.4 Legal Action

When an investigation is completed, and a determination has been made by the police to refer the child abuse matter to the attention of the Crown prosecutor, the police will advise Child Protection Services of this action. While it is recognized that the police have the right to lay a charge, the decision as to whether or not to proceed to Court with the charge rests with the Crown prosecutor as the agent of the Attorney General.

Where a decision is to be made by Child Protection Services as to whether or not to refer the matter to the attention of the Crown counsel, representing the Minister of Family and Community Services, in the family court for an application under the *Family Services Act*, Child Protection Services will advise the police.

## 6.3 Crown Prosecutor Responsibility in Cases of Child Abuse

### 6.3.1 General

The Public Prosecutions branch of the Department of Justice provides the services of Crown counsel as agents of the Attorney General in two types of

cases. In addition to the traditional function of the branch to prosecute offences involving children as victims of crime under the *Criminal Code*, Public Prosecutions also provides counsel to represent the Minister of Family and Community Services in cases involving protection of children under the *Family Services Act*. Thus, legal services are provided by the branch for both the criminal and civil aspects of child abuse.

In cases involving child abuse within a family setting, both a criminal prosecution and a child protection proceeding may be taking place at or near the same time, the prosecution of the alleged offender in the criminal court and the child protection hearing in the family court. In the event of such parallel proceedings, it is the policy to provide the same Crown counsel to conduct both the criminal prosecution and the child protection case, wherever possible.

When such parallel proceedings have been instituted, the purpose of each hearing is different. The issue in a criminal prosecution is the determination of the guilt of the alleged offender. The focus of the child protection case is the welfare of the child victim.

In the criminal hearing, the accused is presumed innocent until proven guilty and the burden of proof is beyond a reasonable doubt. In the criminal context, the possibility that a disposition could result in a loss of liberty and freedom by incarceration requires that a high standard of proof be applied.

In the child protection hearing, the paramount consideration is the “best interests” of the child and the burden of proof is on a civil law balance of probabilities. Thus, evidence which would be inadmissible in criminal proceedings may be admissible at a child protection hearing, if relevant to the child’s “best interests”.

### 6.3.2 Criminal Proceedings

#### *I. Police Investigation Report to Crown*

Once an investigation is completed by the police, the investigating officer will prepare a fully detailed report to be submitted to the Crown prosecutor. The report will contain:

- a summary of the officer’s own investigation;
- a copy of the complainant’s statement;
- a copy of all witnesses’ statements;
- a copy of the accused’s statement, if any;
- any drawings, maps or photographs;
- a list of any exhibits which will be needed at a trial.

In cases where a child’s statement has been recorded on videotape, a copy of the videotape will be provided to the Crown prosecutor for his or her use in assessing the evidence. If more than one videotape interview has been conducted, copies will be provided.

#### *II. Initiating Prosecutions*

The police are responsible for investigations and Crown prosecutors, as agents of the Attorney General, have no authority or right to exercise control over investigations. At the prosecution stage, the Crown prosecutor must evaluate the evidence and decide whether to authorize charges against any person.

The decision as to what evidence is legally admissible, whether the evidence is sufficient to prove a charge and what, if any, Charter matter is involved, are all legal issues requiring a decision by a lawyer prior to the laying of a charge.

Crown prosecutors are to scrutinize and give their consent to all charges before they are laid by the police. In this regard, the major role of the Crown prosecutor is to determine whether a criminal offence is disclosed by the police investigation, whether a sufficient case is made out and whether a prosecution is justified in the circumstances.

It is the Crown prosecutor’s role to make the decision as to whether a charge is to be laid, but if there is strong disagreement with the investigating officer regarding the matter, the Crown prosecutor should consult with the regional Crown prosecutor before a decision is made on the file. If a complainant raises strong objection about a decision not to prosecute, the complainant should be advised to discuss the matter with the regional Crown prosecutor.

In the case of strong disagreement by either the police or a complainant about a decision not to prosecute, further consultation will take place with the Director of Public Prosecutions, if the circumstances warrant. However, it must be kept in mind that the peace officer or indeed a private citizen has an absolute right in law to lay a charge and actually may do so.

Whenever a private prosecution is commenced, the Crown prosecutor, as the Attorney General's representative, should be prepared to either proceed with the charge, allow the private prosecution to continue or halt further proceedings. If a charge is laid contrary to the advice of the prosecutor, the Director of Public Prosecutions is to be immediately advised and a decision will be made by the Director as to whether to stay proceedings. This must be agreed to by the Deputy Attorney General or Attorney General, to allow the proceedings to continue, or to withdraw the charge.

Before any of these actions are taken, the Crown prosecutor will be called upon by the Director to explain the reasons for the recommendation not to charge.

### **III. Charging Decision**

The prosecutor is charged with the responsibility for the conduct of the case. One of the first and most important decisions to be made is whether or not a charge should be laid. In reaching this decision, the Crown prosecutor will consider the gravity of the offence and the consequences affecting not only the suspect but, in certain circumstances, the whole community.

Every effort must be made to ensure that the decision to charge or not to charge is reached dispassionately, after as much deliberation as circumstances permit. Sometimes a degree of haste is inevitable if there is a danger that the suspect will disappear, commit further offences, interfere with vital witnesses or otherwise impede the investigation.

The following are some of the factors which a prosecutor must consider in deciding if a charge should be laid:

- Sufficiency of Evidence
- Public Interest Factors
- Seriousness of the Offence
- Victim's Attitude

### **IV. Special Considerations in a Charging Decision Involving a Child Victim**

In prosecutions of offences involving child victims, an assessment of a child's ability to testify in a court of law will have to be made. By virtue of the dynamics of child abuse, the offence will most often take place in circumstances where there are no other independent witnesses and the child's evidence may be the only means of proof.

At the charging stage the prosecutor will need to rely on the advice of police and child protection investigators as to the child's ability to give his or her version of events. Where a videotaped statement of the initial interview with the child is available, the viewing of the videotape will be a helpful indicator of the weight and quality of the evidence. The Crown prosecutor may need to conduct a personal interview with the child victim before a decision to prosecute is made.

The quality of the child's evidence will depend on many factors including:

- the ability to testify on oath, solemn affirmation or promise to tell the truth;
- the ability to recall the details of the abuse and the surrounding circumstances;
- the ability to recall dates, times and places;
- the consistency of the child's version of events, if repeated;
- the quality of the initial interview including the presence of prompting, coaching, inducements, pressure to disclose abuse or the use of leading questions by the interviewer and the presence of emotional and/or family support for the child victim.



### **V. Accused's Detention Pending Trial**

- In cases where serious violence is involved and the police have detained the accused, the Crown prosecutor should request a "show cause" hearing and present all relevant evidence to enable the Court to make an informed decision on the issue of the accused's detention or release with appropriate conditions including supervision and a no-contact order.
- The detention of an accused in custody pending his trial is justified only on either of the following grounds:
  - *on the primary ground that his detention is necessary to ensure his attendance in Court; and*
  - *on the secondary ground (which shall be addressed only after it is determined that his detention is not justified on the primary ground) that his detention is necessary for the protection or safety of the public having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or interfere with the administration of justice.*
- In cases where the violence is less serious, and the police have detained the accused in order to prevent the continuation of the offence, the Crown prosecutor in most cases will agree to the release of the accused with appropriate no-contact conditions requiring the accused to refrain from any contact or association with the child victim at his or her place of residence. A violation of this release condition will result in future arrest and detention of the accused pending his trial.

### **VI. Obtaining Date for Trial**

The Crown prosecutor will make every effort to obtain an early trial date in order to alleviate as much stress on the child victim as possible.

### **VII. Pre-Trial Preparation of the Child Witness**

- The prosecutor will meet with the child at the first reasonable opportunity to prepare the child to testify. Preparation of the child is necessary to ensure the quality of the oral

evidence and to allay some of the child's fears. The importance of pre-trial preparation is apparent when it is considered that the child is the main witness and that most often there is no other corroborative evidence.

- Often these child witnesses have been overtly threatened with harm and are afraid of being hurt by the accused. Some have mothers who are not only failing to support the child but are actively supporting the accused.
- Some children require substantial pre-trial therapy simply to overcome the traumatizing effects of fear, guilt and humiliation before they are able to testify.
- For some child witnesses, testifying may be a positive, empowering experience which can benefit them throughout their lives. The benefit is seen to be obtained through the public vindication inherent in the criminal justice process which lifts the burden of responsibility from the shoulders of the victim.
- Referral should be made to the Department of Public Safety Victim Services to provide the child with the necessary pre-trial support.

### **VIII. Victim-Witness Guidelines**

- Crown prosecutors should, where possible, interview all witnesses prior to court hearings.
- Crown prosecutors should ensure to the greatest extent possible, and utilizing the Department of Public Safety Victim Services, that victims and witnesses are kept informed of the status of the case. This includes advising them of the disposition of the case.
- Crown prosecutors should ensure:
  - *a victim's concerns regarding the accused's release pending trial or pending sentence are communicated to the Court;*
  - *the victim's concerns are ascertained and where appropriate are communicated to the Court through the use of a victim impact statement at the time of sentencing;*
  - *the language needs of the victim, the victim's family and witnesses are communicated to the appropriate person.*

- Specific protocols have been adopted for witnesses who have been victims of sexual assault, which include child witnesses:
  - *In all cases involving sexual assault, where a victim is required to testify at a trial, the Crown prosecutor will make a referral to a victim-witness worker.*
  - *If a guilty plea is entered, when appropriate, the victim of sexual assault will be referred to a victim-witness worker for the purpose of emotional support and the preparation of a victim impact statement at the sentencing stage.*
  - *The Crown prosecutor will ensure that a social support person is present in the interview room throughout each preparatory stage.*

The social support person can be a friend, family member, social worker, victim-witness worker, police officer or other suitable person. The social support person should not take part in the actual interview process.

### **IX. Pre-Trial Disclosure**

- Crown prosecutors have a duty to make timely disclosure, upon request, of all relevant information in their possession to the accused or counsel for the accused. Full disclosure is subject to the discretion of the Crown to withhold irrelevant or privileged information.
- There is no duty on Crown counsel to provide to the defence information not in the possession of the Crown or the police.
- Police should obtain all information relating to the case from the Department of Family and Community Services. Such information will be subject to disclosure by the Crown prosecutor to the accused or defence counsel for the accused in a timely fashion before trial.
- As part of disclosure requirements, the accused will be given an opportunity to view a copy of any videotaped interview of the child. No copy will be provided to be retained by the accused or defence counsel except by order of the court after an application made by defence counsel.

### **X. Justice Guidelines for the Testimony of Children**

- A Crown prosecutor will in every case examine as a first and most desirable option the appropriateness of calling a child complainant to testify *viva voce* or live before the Court without any protective aids or devices.
- When a complainant is under 18, Crown prosecutors will be responsible for ensuring that reasonable efforts are made to protect the child witness from contact with the accused while inside the court house both inside and outside the courtroom.

#### **A. Outside the Courtroom**

The Crown will take all reasonable steps to implement the following protocols:

- The child should be accompanied by at least one adult who could be a police officer, a victim-witness worker, a child protection worker, a teacher or other professional who knows the child or any other trusted adult.
- The accompanying adult should be advised by the Crown to escort the child to a location avoiding direct contact between the child and accused, as well as the general public.

#### **B. Inside the Courtroom**

The Crown will take all reasonable steps to ensure that where the child is required to testify in the presence of the accused with or without a screen or other device, that the accused is in a non-threatening position relative to the child.

### **XI. Sentencing**

- If a guilty plea is entered or there is a finding of guilt after a trial, the Crown prosecutor should recommend that a presentence report on the accused be prepared for the consideration of the court as to the appropriate disposition. At the same time, the Crown should advise the victim that a Victim Impact Statement can be submitted so that the court can consider, as part of the sentencing process, the effect of the crime on the child. The availability of treatment programs in the community or in correctional facilities should

be made known to the court along with a request for a mandatory treatment condition, where appropriate.

- Recommendations for sentencing should include the following factors:
  - *the need for accountability;*
  - *the seriousness of the offence;*
  - *the criminal and/or child protection record of the offender;*
  - *the desirability of deterring others;*
  - *the effect of the offence on the child and the family;*
  - *the utility of a jail sentence;*
  - *the utility of long-term and supervised probation;*
  - *the possibility of a specific order for mandatory treatment;*
  - *the offender's motivation for treatment.*
- In intrafamilial sexual abuse cases, these additional factors should be considered:
  - *the safety of the child and the likelihood of reoccurrence;*
  - *the effect of the sentence on the rehabilitation of the family;*
  - *the emotional and psychological relationship between the offender and the victim;*
  - *the willingness of the offender to accept total responsibility for his actions.*

## **XII. Counselling**

In all cases of child abuse, Crown prosecutors are encouraged to assist the victim and/or family members in obtaining counselling services.

## **XIII. Compensation for Victims of Crime**

In all cases of child abuse, Crown prosecutors are asked to inform the victim and/or the guardian of the existence and purpose of the Victims of Crime Compensation Program and to refer the victim and/or guardian to the victim services coordinator for the purpose of an application.

## **Child Protection Proceedings**

### **I. Child Protection Investigation Report to Crown**

Under the *Family Services Act*, Crown counsel will act for the Minister of Family and Community Services in bringing the application for a child protection order to the Court of Queens Bench, Family Division. The Social Worker's Brief is prepared and submitted to the Crown before an application is made to court. Crown counsel will be available for consultation prior to the institution of proceedings.

### **II. Initiating Applications**

- Crown counsel is responsible for bringing the application before the court and presenting all evidence to the justice presiding in the judicial district of the Family Division. The Crown provides advice on the adequacy of the grounds for the initiation of applications and on the evidence required to be presented in proof. The child protection worker is responsible for obtaining the evidence and preparing all documentary material.
- In child protection proceedings the Minister of Family and Community Services is a client of counsel provided by the Attorney General.

### **III. Pre-Hearing Disclosure**

- In child protection proceedings, the Minister of Family and Community Services has a duty to make timely disclosure upon request, of all relevant information in his/her possession to the respondents or counsel for the respondents. Full disclosure is subject to the discretion of the Minister to withhold privileged information.
- Information that should be disclosed by the Minister of Family and Community Services in child protection cases includes case worker notes, statements by experts and prospective witnesses and all relevant evidence available to Family and Community Services not protected by law from production to third parties.

### **IV. Child Protection Process Considerations**

- As part of pre-hearing preparation, the Crown prosecutor will consider the possibility of

making a motion at the hearing for the preparation of an independent psychological, psychiatric or social assessment of the child and/or any respondent.

- Depending on the age and maturity of the child, the Crown will also consider whether or not to make a motion for the appointment of independent counsel for the child.

#### V. Child's Right to be Heard

In child protection hearings, the child has a right to be heard and to participate in processes that lead to decisions which affect them, to the extent that they are capable of understanding. If a child's wishes can be expressed and if he or she is capable of understanding the choices that may be available, any person who has authority to make a decision that affects the child is required to consider the child's interests and concerns as separate from those of any other person. The child's interests and concerns can be conveyed by the child, an independent counsel, a responsible spokesperson or a child protection worker, depending on the circumstances of the case.

#### VI. Evidence

- As opposed to the standards for admissibility of evidence in criminal proceedings, the rules of evidence in child protection proceedings are less strict.
- In child protection proceedings, the paramount consideration is the "best interests of the child". This permits the court to consider any evidence that is credible and relevant. The highest standard of proof is on a balance of probabilities. However, depending on the discretion of the presiding justice, hearsay evidence which is otherwise inadmissible may be considered if it is considered reliable and relevant to the child's welfare.

#### VII. Best Interests of the Child

Any final disposition of the application for an order will be made applying the test of the "best interests of the child" which is defined in the *Family Services Act*.

#### Linkages in Parallel Criminal and Civil Proceedings

- When child abuse has occurred in an intrafamilial situation, it is possible that a child protection hearing and a criminal prosecution are taking place at the same time or one is following the other. If a child protection application is commenced, the legislation requires the court to hold a hearing within fifteen days. Because of strict statutory time limitations, the child protection application is likely to proceed prior to any criminal proceedings.
- The same Crown counsel will be assigned wherever possible, to both proceedings.
- In such bilateral proceedings, the Crown prosecutor should consult with both the police and the child protection worker and take into account their opinions and other information in their possession.
- Where parallel criminal court and family court proceedings are taking place, there should be close consultation and information sharing between the police officer, the child protection worker and the Crown prosecutor. There will also be the mutual use of certain evidence including expert reports, videotapes and other potential documentary or oral evidence.

### **6.4 Court Process in Cases of Child Abuse**

#### **6.4.1 Criminal Courts**

##### **I. Court Appearance**

- When a police officer investigates a child abuse complaint and finds that there is sufficient evidence to recommend criminal charges, a determination must be made as to whether or not the accused is to be arrested and brought before a judge or released by the police at the time of arrest.
- If the accused is to be released by the police officer, the officer will prepare and serve an appearance notice or a promise to appear requiring the offender to appear for a plea on a specified date. Should the accused not be available for service of an appearance notice or promise to appear or if further investigation is

required, the police officer may prepare a summons at a later date which is signed by a judge of the Provincial Court and served upon the offender by the police officer.

- If the police are of the opinion that it is not in the public interest to release the accused, he is detained in custody and brought before a judge of the Provincial Court at the first reasonable opportunity.
- An information is prepared by the police agency which indicates the particulars of the charge such as the time, date, place, victim and nature of the offence. This information is sworn by a police officer before a Provincial Court judge and read to the accused by the judge at the time of his first appearance before the Court. The accused can consult with a legal aid lawyer prior to entering a plea.

## **II. Exclusion of the Public**

- The *Criminal Code* provides that proceedings against an accused must be held in open court. An exception may be made when the court is of the opinion that “in the interest of public morals, the maintenance of order or the proper administration of justice”, the public should be excluded for all or part of the proceedings. Due to the sensitivity of child abuse cases, the public may be excluded from that portion of the trial or hearing that involves the testimony of the child witness.

## **III. Ban on Publication**

- In the prosecution of a sexual offence the judge may make an order directing that the identity of the complainant or a witness and any information that could disclose the identity of the complainant or witness not be published in any document or broadcast in any way.
- The presiding judge is required under the *Criminal Code* to inform any witness under the age of eighteen of the right to such an order.

## **IV. Testimony of Children**

- The *Criminal Code* permits children under the age of 18, if certain tests are met, to testify by means of a videotape, by closed circuit television in a room outside the courtroom or behind a screen in the courtroom.
- It is necessary to ensure that, when a court makes an order that a child can testify by one of these methods, the proceedings will not be unduly delayed by uncertainties regarding responsibility, procedure and technological requirements.

## **V. Trial Courts**

- If the accused is charged with a summary conviction offence, which is an offence of a more minor nature, then the Provincial Court judge has absolute jurisdiction over the matter and, if the accused pleads not guilty after the information is read, a trial date will be set and the trial will take place in the Provincial Court.
- If the accused is charged with an indictable offence, which is an offence of a more serious nature, he may elect to be tried in the same way as for a summary conviction offence, that is, by a Provincial Court judge. However, the accused has the additional right with most indictable offences to be tried by a judge alone of the Court of Queen’s Bench or by a judge of the Court of Queen’s Bench with a jury, as well as by a Provincial Court judge. If the accused elects to be tried by a Queen’s Bench judge or by a Queen’s Bench judge and jury, then a preliminary inquiry is scheduled in front of a Provincial Court judge. If a preliminary hearing is held, witnesses are subpoenaed and a determination is made by the Provincial Court judge as to whether there is sufficient evidence to commit the accused to stand trial.
- If the accused is charged with a very serious crime such as murder, then he must be tried before a Queen’s Bench judge with a jury unless the Attorney General consents to a trial by a judge of the Court of Queen’s Bench without a jury.

- When an accused is committed to stand trial after a preliminary hearing, the Crown prosecutor will prepare an indictment which states the particulars of the charge such as the time, date, place, victim and nature of the offence. Subpoenas requiring the attendance of witnesses in court are prepared and served in the same manner.

## ***VI. After Plea or Finding of Guilt***

If the accused pleads guilty or is found guilty after a trial, the judge will determine the appropriate sentence. Depending on the seriousness of the offence, the type of disposition will vary from a lengthy or short term of imprisonment for the serious and/or repeat offences to probation and/or a fine for the less serious offences.

### **6.4.2 Family Court**

#### ***I. Commencement of Application***

- If the Minister of Family and Community Services has reason to believe that the security or development of a child may be in danger, he may place the child under protective care. The Minister has five days to decide whether to commence an application or to release the child from protective care.
- If an application is commenced, the Minister is required to serve the parents and any other respondents with a Notice of Application. The court administrator is required to set a time and place for a hearing which must be held as soon as reasonably practicable but in no case later than fifteen days after the application is made.

#### ***II. Court Appearance***

If the court is satisfied that reasonable efforts have failed to locate a parent or other person required to have notice, the court may waive the requirement of notice. When the hearing commences, the court will consider issues such as the appointment of independent counsel or a responsible spokesperson to represent the interests of the child as well as the desirability of obtaining such expert reports as psychological

assessments on the child, the parents and/or any other person who is in a position to influence the nature of the care and control exercised with respect to the child.

#### ***III. Wishes of the Child/Right to be Heard***

The court may consult directly with the child “in camera”, excluding any or all persons from participating in or observing the consultation. Although the child is not required to attend court, the court must consider that the child has a right to be heard either on his or her own behalf, through legal counsel, a parent or a responsible spokesperson. The Minister is also obliged to consider the wishes of the child and treat those wishes as distinct interests and concerns separate from those of any other person.

#### ***IV. Dispositions***

After hearing evidence, if the court is satisfied that it is in the best interests of the child, any one of the following orders may be made: a supervisory order authorizing the Minister to supervise the child, the child’s family and/or manage their property and other affairs; a custody order transferring the custody, care and control of the child to the Minister for a period of up to 6 months; a guardianship order transferring from a parent to the Minister on a permanent basis the guardianship of the child, including the custody, care and control of, and all parental rights and responsibilities with respect to the child; a protective intervention order directed to any person who, in the opinion of the court is a source of danger to a child’s security or development.

## **6.5 Family Court Staff Responsibilities**

### **6.5.1 General**

The Court of Queen's Bench Family Division, is mainly distinguishable from other courts in that its jurisdiction solely encompasses family law matters.

Several support services are provided to separating or divorcing spouses and single parents within the Court premises. These services include:

- information and screening services
- counselling
- mediation services
- legal services under the Domestic Legal Aid Program
- support enforcement services.

These services are provided by the regional manager, legal officer acting as the court administrator, enforcement officers, bookkeepers, court social workers, secretarial support staff and family solicitors hired on contract to provide legal representation.

The unified family court concept "unifies" federal and provincial jurisdictions and the social arm attached to the Court, providing a variety of programs; it is a true one-stop service for people seeking remedies under family law, including support, custody, access, determination of paternity and variations of existing orders. The addition of an enhanced domestic legal aid program to a similarly enhanced counselling and mediation service has resulted in a comprehensive range of counselling, mediation and legal services aimed at helping families resolve difficulties arising from marital breakdown.

### **I. Domestic Legal Aid**

- The Domestic Legal Aid Program in place has complemented other family support services attached to family court. Working together, court social workers and family solicitors will be able to represent the interests of victims of spousal abuse. In non-abuse cases, they will promote the use of alternate dispute resolution and non-adversarial self help legal remedies, wherever possible.
- Court social workers will, after screening and assessment, refer victims of spousal abuse to the family solicitor. The family solicitor will represent the legal interests of victims of spousal abuse and can apply to the court for any needed relief under the *Family Services Act* as well as the *Marital Property Act* and the *Divorce Act*, in certain circumstances.

### **II. Mandatory Reporting of Child Abuse by All Family Court Staff**

- Employees responsible for the delivery of the Family Support Services, especially the court social worker, may acquire information which causes them to suspect child abuse as a result of speaking with people seeking the services of the Domestic Legal Aid Program or other family support services. Employees are reminded that s. 30(1) of the *Family Services Act* requires them to report any information which causes them to suspect that a child has been abused. The legislation obliges everyone to report to Child Protection Services, Department of Family and Community Services. The obligation is mandatory even if the information is based on mere suspicion and regardless of the identity of the alleged offender. Prior to referral, the employee should not make a subjective determination as to whether an allegation is true or false.
- If any information involving possible criminal activity comes to the attention of employees, the police shall be informed by means of a telephone call and details of the telephone call should be logged in the file.

- Professional persons who fail to report suspected cases of child abuse and neglect of children under sixteen years of age are guilty of an offence under s. 30(3) of the *Family Services Act*.
- For those who do report, no legal action can be taken against them if they act in good faith. Further, except in the course of judicial proceedings, the identity of the person providing the information cannot be revealed without that person's written consent.
- Although the family solicitors are not Court Services employees but rather hired on contract to provide legal representation to the clients, they are obligated pursuant to the *Family Services Act* to report any suspicion as any other person save and except as provided for in s. 30(2) of the Act as explained below.
- Section 30(2) makes it clear that the reporting obligation exists notwithstanding that the information was acquired through the discharge of professional duties or within a confidential relationship, except for any privilege which may exist because of a relationship between a solicitor and the solicitor's client.

Non-professional conduct by school personnel guidelines see Section 6.2.3.

The following guidelines have been developed for specific family court staff:

### 6.5.2 Court Social Workers

In practice, court social workers always operate on the basis of confidentiality. However, when a court social worker encounters a case where there is disclosure or any reason to suspect the possibility of neglect or abuse of a child, the court social worker must advise the client that he/she has the obligation to provide a report to Child Protection Services, Department of Family and Community Services.

It is understood that the court social worker has the duty to report and that the Department of Family and Community Services has the responsibility to investigate. The communication must be made immediately by means of a telephone call which must be logged in the file

noting the date and name of the child protection official who took the report. Written confirmation shall be sent within two (2) working days to Child Protection Services, a copy of which shall be kept on file.

Allegations of suspected abuse or neglect may be encountered through the screening or evaluation process. They can be made by the clients themselves who may have witnessed or have first hand knowledge of the abuse, in which case the facts are more likely to be clearly identified.

They could also be triggered by the observations made by the court social worker during a joint session where both the client and the child are present.

During the mediation process, such allegations may surface as a result of a confession of one of the parents or through the allegations of either spouse.

### 6.5.3 All Court Services

All other Court Services Staff which includes regional managers, legal officers, enforcement officers, book keepers and secretarial support staff may become aware of a potential child abuse/neglect situation in the course of their work. If this occurs, the employee is legally required to report the matter to Child Protection Services, Department of Family and Community Services. The communication must be made immediately by means of a telephone call which must be logged in the file noting the date and name of the child protection official who took the report. Written confirmation shall be sent within two (2) working days to Child Protection Services, a copy of which shall be kept on file.



#### 6.5.4 Family Solicitors

The family solicitors are contracted to represent the victims of spousal abuse in respect to matters covered by the Domestic Legal Aid Program. There may have been, as well, allegations/disclosures of child abuse. The family solicitor should be aware of the dynamics of violent family relationships so that he or she may deal sensitively and effectively with these cases. Section 30(2) states that nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

#### 6.5.5 How to Recognize Child Abuse

It is crucial that Court Services staff familiarize themselves with the definitions of child abuse/neglect and with indicators of such situations. The presence of indicators, the nature and identity of which arouse suspicions of abuse and/or neglect, is sufficient to warrant an investigation. That is mere suspicion, not conclusive evidence, is the prerequisite for an investigation.

Even those who work directly with children on a daily basis may find it difficult to identify the child who is abused and to know with certainty that the child has been a victim of abuse or neglect. Thus, it is important to remember that the professional need not be certain that abuse or neglect has taken place. It is the role of the child protection worker and the police to assess the credibility of the complaint after a report has been made.

Staff responsible for the delivery of the Family Support Services must be aware of services which exist in the community to assist abused children and their families, such as:

- police
- victim services
- crisis intervention
- emergency shelter
- legal services
- alcohol/drug treatment
- financial assistance
- mental health services
- transportation

For further information on indicators and definitions of child abuse/neglect, please refer to sections 2 and 4 of this document.

For further information on services provided by the family support services, please contact the family court in your area.

**For information on the role of Correctional Services in Cases of Child Abuse (victim services, offender services, etc) please refer to the Public Safety section of the protocols.**

## 7.0 Department of Public Safety

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### 7.1 Introduction

The Department of Public Safety contributes to the protection of society by providing leadership in the areas of law enforcement, public safety, crime prevention and the delivery of a full range of community-based services and correctional programs, services and interventions to assist victims of crime, adult offenders and young persons as defined under the *Youth Criminal Justice Act*.

The Department recognizes that no one system can by itself “solve” the problem of child abuse and neglect. The coordination and use of both social and legal interventions is critical to minimize interference with, and disruption of the child victim’s well-being. A collaborative approach is also necessary to create a safe environment in which the child can recover and provide maximum opportunities for the control and treatment of the abuser.

The following protocols have been developed to emphasize a multidisciplinary approach focusing on the roles and responsibilities of law enforcement, community and correctional professionals who are involved in the investigation of child abuse/neglect situations and the delivery of services to victims and abusers. The multidisciplinary approach normally commences with the joint investigation of cases by the Police and Child Protection Services, and continues with the collective interventions of the community and correctional system in responding to the victim and the adult offender/young person.

Although these protocols were designed primarily as a guide for those professionals who are required to intervene in cases of child abuse/neglect during the normal course of their duties, it is also recognized that the mandatory reporting responsibility lies with every person who encounters a situation of child abuse/neglect. It is therefore essential that all individuals (both staff and volunteers) working in every program/service delivery area of the Department of Public Safety and Police Forces, familiarize themselves with the indicators of child abuse/neglect, along with the mandatory reporting provisions contained in this document.

## 7.2 Mandatory Reporting

The *Family Services Act* requires everyone to report to the Department of Family and Community Services any information which causes them to suspect that a child has been abused or neglected. Prior to referral, the employee should not make a subjective determination as to whether an allegation is true or false. Mere suspicion is the legal requirement for mandatory reporting. Failure to report a suspicion of child abuse/neglect to the Department of Family and Community Services is an offence under the *Family Services Act*.

## 7.3 Reporting Procedures

During regular working hours, all suspicions of child abuse/neglect will be immediately and directly reported by telephone to the Access and Assessment Unit, Child Protection Services, Department of Family and Community Services. After regular business hours, during weekends or holidays, reports of child abuse/neglect will be made through the "After Hours Emergency Social Services" (AHSS) at **1-800-442-9799** or **453-2145** in the Fredericton region;

A verbal report will include, where possible:

- Child's complete name and birthdate;*
- Parent/Guardian's name and address;*
- Details of suspected abuse/neglect;*
- Name of the person who suspected the abuse/neglect.*

- The verbal report will immediately be followed by a written referral, whenever possible, by using the Child Abuse/Neglect Referral Form (see Appendix 13.2);
- The employee will not interview the child. This is the role of Child Protection Services and the Police. However, the employee should remain responsive, supportive and open if the child continues to talk about what has occurred;
- When a report has been made to the Department of Family and Community Services, the employee will advise his/her immediate supervisor of the fact and the nature of the complaint;
- The employee's immediate supervisor will ensure that the Department of Family and Community Services has been informed and subsequently report the incident within the proper line of authority of the Department of Public Safety;
- When the information obtained includes allegations of criminal activity, the employee, after notifying the Department of Family and Community Services, will also advise the appropriate local police agency of the fact of the complaint, its' nature as well as the referral having been made to the Department of Family and Community Services for investigation;
- Where the employee's immediate supervisor suspects child abuse/neglect has occurred, he/she shall verbally advise Child Protection Services and then forward a written report, whenever possible, by using the Child Abuse/Neglect Referral Form (see Appendix 13.2), requesting an appropriate investigation;
- Any action taken will be documented.

## 7.4 Non-professional conduct by school personnel

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined

as, “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years”.

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education’s Policy 701 on its policy website.

### **7.5 Child at Risk Team (C.A.R.T.)**

To further enhance the collaborative efforts of all partners providing services for children at risk of abuse and neglect, the Department of Public Safety will maintain membership in each regional Child at Risk Team established in the Province of New Brunswick. Where operational requirements permit, each regional team will normally include a representative from the local municipal Police Force, Royal Canadian Mounted Police, Victim Services, Probation Services and, in the Miramichi region, the New Brunswick Youth Centre.

### **7.6 Policing Services**

The *Criminal Code of Canada* specifies that Police Forces are responsible for the criminal investigation process, which includes gathering sufficient evidence and collaborating with the Crown Prosecutor with respect to charges, where warranted. Physical abuse of a child, sexual abuse of a child and withholding the necessities of life from a child are all forms of criminal activity. For the purposes of child abuse and neglect allegations, it is recognized that the protection of the child is of primary concern. It is therefore essential that a multidisciplinary approach be

taken by both the Police and the Department of Family and Community Services, who are jointly responsible for investigating cases of suspected child abuse/neglect.

The Police must also be fully cognizant of their responsibility and authority under Section 12 on the *Police Act*, which states that police officers are responsible for:

*"assisting in the taking of a child into the protective care of the Minister of Family and Community Services, as well as in the enforcement of warrants, custody orders, protective intervention orders, restraining orders and similar court orders issued in family proceedings, when the safety or security of a child or other person is at risk"*.

Police Forces have written policy regarding procedural sequence of duties relating to complaints where abuse/neglect has, or may have, occurred. The following protocols have been developed to further enhance existing policies specifically relating to suspected cases of child sexual abuse, physical abuse and serious neglect.

In addition, best practices/procedures in cases involving child abduction are outlined within these protocols. Please refer to Section 12.0 for specific guidelines relating to cases of child abduction.

#### **7.6.1 Receiving a complaint**

Cases of suspected child abuse/neglect may come to the attention of the Police Force either during the course of a criminal investigation or as an independent report from a complainant. In either case, the investigation process will immediately be initiated upon receipt of the initial complaint of suspected child abuse/neglect.

Preliminary information gathering is critical to further the investigation. Whether the reported suspicion is received by a Social Worker employed by the Department of Family and Community Services, a Dispatcher or a Police Officer, the following information should be determined:

- Whether the alleged abuse/neglect is current or occurred in the past;
- If the event is a current situation, determine whether the child victim is in any immediate danger;

- Whether the suspect(s) is(are) currently in a position where further child abuse/neglect could be occurring;
- Whether the complainant is now an adult who is reporting being victimized as a child.

### 7.6.2 Joint Investigations

Prior to initiating an investigation in cases of suspected child abuse/neglect, the Police Officer assigned to the investigation will report the allegation to Child Protection Services, Department of Family and Community Services, in accordance with mandatory reporting provisions of the *Family Services Act* when:

- There is a child victim;
- No child victim has been identified but information has been received that the suspect, who has a known history of child abuse/neglect, is currently in a position where further incidents of child abuse/neglect could be occurring.

The police and Child Protection Services will determine whether a joint investigation will be initiated. However, all investigations in cases of child sexual abuse, physical abuse and serious neglect should be conducted jointly, involving both a Police Officer and a Child Protection Investigator employed by the Department of Family and Community Services.

Please refer to Section 4.0 for specific guidelines relating to the Joint Investigations process.

### 7.6.3 Independent police investigations

Police have sole responsibility for the criminal investigation of child abuse/neglect incidents once it has been determined that:

- There is no joint investigation;
- The adult complainant reports having been victimized as a child and it has been determined that the suspect is not currently in a position where further child abuse/neglect could be occurring.

Interviews will be conducted as soon as possible upon receipt of the initial complaint of alleged abuse/neglect. The sequence of interviews and the

need to substantiate the initial allegation of abuse/neglect will be determined on a case by case basis. In most instances, the complainant, the child or adult victim, the siblings, the non-offending parent/guardian and the suspect will be interviewed:

#### (a) The Complainant

A detailed interview with the person who has reported the abuse/neglect should be conducted, as determined by the investigating officer;

The complainant should be advised that the matter will be reported to the Department of Family and Community Services;

The police will check their records regarding the complainant, the alleged suspect, the child and the child's family. The Department of Family Community Services will be contacted and information between both agencies will be shared from their records.

The investigator will use discretion in disclosing information to the Department of Family and Community Services which is unrelated to child abuse or neglect.

#### (b) The Child or Adult Victim

The Police should see the victim as soon as possible. Extreme sensitivity when interviewing or seeking to interview the child should be exercised;

The investigating officer will decide if and when a medical examination should occur. Where recent intercourse or violence has occurred, the medical examination should be arranged immediately;

Interviews with all alleged child victims should be videotaped. In child sexual abuse investigations, interviews with the victims shall be videotaped. Please refer to Section 11.0 for protocols on conducting videotaped interviews with children;

It may be necessary for a short preliminary interview to be held with the child in a neutral setting such as a school prior to conducting a full videotaped interview;

- When using a neutral setting such as a school for a preliminary interview, the child's right to privacy should be safeguarded as much as possible;

- Factors to consider in determining a location for the initial interview should include:
  - *where and how disclosure occurs;*
  - *where the abuse/neglect occurred;*
  - *where the victim will feel safe;*
  - *where interruptions will be kept to a minimum;*
  - *reaction of the non-offending parent(s);*
  - *where the alleged suspect is located.*
- The child will normally be interviewed alone by the primary interviewer(s). The only exception to this is in the case where the child specifically requests to be accompanied by a supportive person or, in the case of a videotaped interview, when a person is required to operate the camera. If the presence of a parent or other supportive adult is permitted during the interview, that person will be instructed to be a non-active participant by refraining from any interruptions or comments, other than to offer support to the child;
- Where resources permit, it is also helpful to have the presence of a "non-interviewing" Police Officer in the monitoring room, who may take notes while the interview is being conducted. This is valuable in the event that the tape recorder or tape fails without the knowledge of the primary interviewer(s);
- The purpose of the interview as well as the role of the Police should be explained to the child at the outset of the interview;
- Age appropriate language should be used when interviewing a child. Any written statement from the child shall be verbatim;
- A full investigation should be conducted even though a child may recant his/her story subsequent to the original statement. Such an event is not unusual, particularly in cases of child sexual abuse. It is for this reason that all written or taped statements of the child are extremely important;
- All cases of child abuse/neglect will be referred to the Police-Based Victim Assistance

Coordinator, where the program is operational. Please refer to Section 7.6.6 for further detail on the Police-Based Victim Assistance Program;

- If a Police Force does not operate a Police-Based Victim Assistance Program, the investigating officer will refer the child abuse/neglect matter to the Department of Public Safety Victim Services Program. Please refer to Section 7.7 for further detail on the Department of Public Safety Victim Services Program.

In all cases of child abuse/neglect, the victim and/or non-offending parent/guardian will be provided an Impact Notification Card during the initial contact.

### **(c) Siblings or other possible victims**

Siblings of the child victim should also be interviewed. The purpose of these interviews is to determine:

- *if the sibling is also a victim of abuse/neglect;*
- *if the sibling has knowledge of other possible victims;*
- *if the sibling can corroborate the victim's account;*
- *if the sibling may be at risk following the victim's disclosure or in any subsequent family crisis.*

The siblings should be interviewed privately and separately. The same degree of care and attention given to the child victim should be exercised by the interviewer during these interviews;

- Written statements and/or audiotapes or videotapes must be made of the sibling statements;
- In the course of the interview, if it is determined that a sibling is also a victim, the guidelines for interviewing the child should be followed.

### **(d) Non-offending Parent/Guardian**

A non-offending parent/guardian should be interviewed as soon as possible after the victim and his/her siblings. It is preferable for the

interview to occur before the child victim and his/her siblings discuss their interviews with the non-offending parent/guardian. During the interview, the following should be ascertained:

- a determination of the non-offending parent's awareness of the abuse/neglect;
- an assessment of the non-offending parent's relationship with the suspect, including spousal relationship, degree of dependence or autonomy, and the presence of violence or fear from the suspect;
- a determination of what resources will be required to assist the family in protecting the child and preparing for the events that follow disclosure.

#### **(e) The Suspect**

- It is a police function to investigate a criminal offence, to identify and interview the suspect;
- Initial contact with the suspect will normally occur after completing interviews with the child victim, siblings, non-offending parents/guardians, and other potential witnesses. While this is the preferred course of action in cases of child abuse/neglect, it is recognized that certain situations will dictate the need for police to arrest the suspect before all interviews are completed;
- Where possible, the suspect should not speak to the victim or other family members before being interviewed.

#### **7.6.4 Legal action**

While it is recognized that the police have the right to lay a charge, the decision as to whether or not to proceed to Court with the charge rests with the Crown Prosecutor as the agent of the Attorney General.

When an investigation is completed, and a determination has been made by the police to present the child abuse/neglect matter to the attention of the Crown Prosecutor, the police should advise the Department of Family and Community Services of this action.

Where the decision to present the matter to the Crown Prosecutor for an application to Family

Court is to be made by the Department of Family and Community Services, the designated Social Worker should notify the police of this action.

When presenting a child abuse/neglect matter to the Crown Prosecutor, the investigating officer will prepare a fully detailed report, containing:

- a summary of the officer's own investigation, including relevant victim information;
- a copy of the complainant's statement;
- a copy of all witness statements;
- a copy of the accused's statement, if any;
- any certificates, medical reports, drawings, maps or photographs;
- a list of any exhibits which will be needed at a trial.

When the decision has been made to refer the child abuse/neglect matter for criminal proceedings, the police investigator or the Police-Based Victim Assistance Coordinator will notify the Department of Public Safety Victim Services Coordinator. Please refer to Section 7.7 for further detail on the Department of Public Safety Victim Services Program.

#### **7.6.5 Court appearance**

When a Police Officer investigates a child abuse/neglect complaint and finds that there is sufficient evidence to recommend criminal charges, a determination must be made as to whether or not the accused is to be arrested and brought before a Judge or released by the police at the time of arrest.

- If the accused is to be released by the Police Officer, the officer will prepare and serve an appearance notice or a promise to appear requiring the accused to appear for a plea on a specified date;
- Where warranted, the accused may be released on a Recognizance or an Undertaking to a Peace Officer or officer in charge, placing conditions and/or restrictions upon the accused (i.e.: refrain from contact with the child, not to be at or near a certain place / property);

- Should the accused not be available for service of an Appearance Notice or Promise to Appear or if further investigation is required, the Police Officer may prepare a summons at a later date which is signed by a Judge of the Provincial Court and served upon the accused by the Police Officer;
- If the police are of the opinion that it is not in the public interest to release the accused, he/she is detained in custody and brought before a Judge of the Provincial Court at the first reasonable opportunity;
- An Information is prepared by the police agency which indicates the particulars of the charge such as the time, date, place, victim and nature of the offence. This Information is sworn by a Police Officer before a Provincial Court Judge and it is normally read to the accused by the Judge at the time of his/her first appearance before the Court;
- The accused can consult with a legal aid lawyer prior to entering a plea.

#### **7.6.6 Police-Based Victim Assistance Program**

If a Police Force operates a Police-Based Victim Assistance Program, the following services can be provided in cases of child abuse/neglect:

- support to the non-offending parent during the immediate crisis and throughout the criminal justice process;
- crisis counselling to the victim and family;
- referrals to appropriate community agencies;
- provision of information relating to the court process;
- support to the victim for giving testimony in Court;
- liaison with the Joint Investigation Team;
- referrals to the Department of Public Safety Victim Services Coordinator for all matters pertaining to Trauma Counselling, Court Preparation and Support, Victim Impact Statement, and Compensation for Victims of Crime.

In all cases of child abuse/neglect, the investigating officer will refer the matter to the Police-Based Victim Assistance Coordinator, where operational;

If a Police Force does not operate a Police-Based Victim Assistance Program, the investigating officer will refer the matter to the Department of Public Safety Victim Services Program. Please refer to Section 7.7 for further detail on the Department of Public Safety Victim Services Program.

The Police-Based Victim Assistance Coordinator may have access to police files for relevant information pertaining to the case which will assist in determining support services required. This includes information relating to the arrest, show cause hearings, conditions of release, plea dates, and sentencing. An important function of the Police-Based Victim Assistance Coordinator is to provide effective communication with Police, Crown Prosecutors and the Department of Public Safety Victim Services Coordinator. Linkages with the Joint Investigation Team (where applicable) are critical to ensure proper communication throughout the legal process.

In the course of dealing with the victim of child abuse/neglect, the Police-Based Victim Assistance Coordinator may have direct contact with the alleged abuser and may as a consequence, witness a voluntary admission of guilt. It is important to note that the Victim Assistance Coordinator may be considered by a Court as a "person in authority". When an accused person makes a statement to a "person in authority", the statement in order to be admissible in Court must be proven to be given voluntarily and the appropriate Warning must have been given.

#### **7.6.7 Statistics**

In accordance with Statistics Canada Uniform Crime Reporting (UCR) and provincial data requirements, Police Forces will keep pertinent information on all occurrences involving child abuse/neglect.



## **7.7 Department of Public Safety Victim Services**

The Department of Public Safety, Community and Correctional Services Division, is responsible for the provision of a range of support services to victims of crime, ensuring that they are adequately and fairly served by the Criminal Justice System.

The primary objectives for the Department of Public Safety Victim Services are:

- To ensure public safety through the provision of quality services for victims of crime;
- To reduce harm done to victims;
- To establish a continuum of services for victims.

The following protocols have been developed to specifically address the delivery of services to victims of child abuse/neglect and their families, who may become involved in the Criminal Court process.

### **7.7.1 Intake/Case Assessment**

In cases of child abuse/neglect, where the incident has been reported to police and a referral has been made to the Department of Public Safety Victim Services, the Coordinator will establish contact with the child and/or parent/guardian or person responsible for the child's care, informing of available services and determining the level of assistance required.

When interviewing a victim of child abuse/neglect and the parent/guardian, Coordinators will:

- Explain the services available through the Department of Public Safety Victim Services, as well as other services available in their local area;
- With the parent/guardian's consent, interview the child alone;
- Assure the child that nothing he/she has done justifies the abuse;
- Determine what services are required, discuss with and obtain parent/guardian consent;
- Where appropriate, provide information to the

parent/guardian on the effects of child abuse/neglect and address the need for emotional support of the child throughout the criminal justice process;

- With the parent/guardian's consent, make referrals for services to community agencies as appropriate;
- Liaise and consult with the Crown Prosecutor, where appropriate, to determine if the child should participate in the Trauma Counselling Program to facilitate testimony in court.

### **7.7.2 Trauma Counselling Program**

The Trauma Counselling Program is available to the child (with parental/guardian consent) who, as a result of his/her victimization, is traumatized and needs assistance to facilitate his/her testifying in Court.

The Department of Public Safety Victim Services provides for direct payment for Trauma Counselling (to a maximum of 10 sessions).

### **7.7.3 Court Support and Court Preparation Programs**

The objectives of the Court Support and Court Preparation Program are:

- To provide information concerning court procedures and the rights and responsibilities of victims who are compelled to testify in criminal proceedings;
- To help alleviate fear through the provision of support;
- To promote a safe environment throughout the Court process.

It is recognized that child victims who are called upon to be witnesses must receive special consideration. Therefore, in cases where the child is compelled to testify in criminal proceedings, the Victim Services Coordinators will:

- Arrange to meet with the child and the parent/guardian prior to the first court appearance to determine the level of direct involvement required to assist the child's participation in the process;

- Respond to specific questions of the child and the parent/guardian;
- Provide relevant information concerning the child's rights, responsibilities and role as a Court witness;
- Utilizing child specific resource materials, explain the court process, role and responsibilities of court officials and familiarize the child with court room surroundings;
- Liaise with the Crown Prosecutor's office and identify any special needs or circumstances of the child prior to or during the court proceedings;
- Liaise with Department of Justice Court Support Services and/or the Crown Prosecutor's office as required to arrange for screens and/or other materials to assist with testimony;
- When the presence of a support person<sup>1</sup> has been ordered by the Court, inform the support person of his/her role, responsibilities and limitations in accordance with the *Criminal Code* and departmental policy;
- Ensure that the child is accompanied during court proceedings;
- Advise the parent/guardian and the child of the outcome of the court proceedings, including any court imposed conditions which may be applicable to the child's safety and responsibility with respect to any perceived violations (i.e. no-contact order).

#### 7.7.4 Victim Impact Statement Program

A Victim Impact Statement is a written statement that describes the harm done and/or the loss suffered by the victim of a criminal offence. If the child is incapable of making a statement, the parent/guardian or person responsible for the care or support of the child may prepare the statement on behalf of the child. In addition, the parent/guardian or person responsible for the care of the child may also make an impact statement as a secondary victim. The Court considers the

statement when determining the sentence of the offender. Providing a Victim Impact Statement is voluntary. However, once filed with the Court, the Victim Impact Statement becomes a matter of record and the author may be called upon to defend the content. Victims have the right to make a request to the Court to read their Impact Statements at sentencing hearings.

A **Court Victim Impact Statement** must be completed on an approved form and filed with the Court. The offender's counsel receives a copy of the statement. For Court ordered Victim Impact Statements, Victim Service Coordinators will:

- Notify the parent/guardian, and the child where appropriate, of the right to prepare a statement once the offender has been found guilty;
- Provide the Victim Impact Statement forms and instructions to the parent/guardian, person responsible for the care of the child and the child where appropriate;
- Provide guidance in the preparation of the statement, ensuring appropriate content as required by legislation/regulation, and assist with any reported limitations and/or disabilities;
- Advise the child and parent/guardian of the distribution and subsequent possible uses of the statement by correctional authorities;
- Ensure, where possible, that the child writes his/her own statement regardless of the length and sophistication of the writing skills. The Coordinator may also assist by writing the child's statement verbatim;
- Where the child is too young to verbalize and/or write the statement, the parent/guardian or person responsible for the child's care may complete the statement for the child. When prepared by someone other than the child, this is to be noted in the statement. Where a child can verbalize but cannot write, the Victim Service Coordinator can take the statement and write it verbatim,

<sup>1</sup>as defined in the Criminal Code

using the child's words to describe the impact. The Victim Impact Statement should only describe the impact of the crime on the child from the writer's observations. This would include apparent changes in behaviour such as nightmares and performance in school;

- Ensure that the author fully understands that he/she may be subject to cross-examination on the content of the statement;
- Once completed and signed by both the author and the Coordinator, file the statement with the Court prior to the sentencing hearing, and in accordance with Court procedure with respect to time limitations;
- Advise the author of the right to read the statement aloud at the sentencing hearing or present it in any other manner that the Court considers appropriate (i.e.: video conference, videotape, audiotape). No one other than the person who has written the statement can read the statement in court;
- Provide information on the Victim Impact Statement transportation program where appropriate, to assist direct victims or survivors to be able to attend and read their statements in Court.

A **Review Board Hearing for a person found not criminally responsible** will consider the written Victim Impact Statement of the victim in accordance with Section 672.5(14) of the *Criminal Code*. Updates of Victim Impact Statements and appearance at Review Board Hearings can be made by the parent/guardian or person responsible for the care of the child victim of offenders found not criminally responsible. The Department of Public Safety Victim Services Coordinator will, at the time of sentencing, advise the parent/guardian of the procedures for registering to attend Review Board Hearings and will advise of the pending hearing dates. Accompaniment to hearings will be done on an as requested basis.

The preparation of a **Parole Board Victim Impact Statement** is available, and must be completed on the approved National Parole Board Form and forwarded to the National Parole Board prior to the Parole Board Hearing. The parent/guardian

must register for information and must make an application to the Parole Board to present the statement at the Parole Hearing. Child victims and the parent/guardian may describe the impact of the crime and any changes since sentencing as well as address any concerns they have for their safety or the safety of the community.

During a **Section 745.6 Hearing**, as provided under the *Criminal Code*, the Court will consider an updated Victim Impact Statement when an offender sentenced to life imprisonment for a murder offence makes an application for a reduction of the Parole eligibility period. The parent/guardian or surviving relative is able to read the updated statement in Court at the time of the Hearing. Financial assistance from Justice Canada is available to attend these hearings. Information and assistance in applying for the Federal funding to attend these hearings will be provided by a Victim Services Coordinator.

#### 7.7.5 Sentencing follow-up

The Victim Services Coordinator will:

- Provide debriefing services to the child and/or the parent/guardian following any Court proceeding;
- Advise the child and/or the parent/guardian of the outcome of the sentencing hearing;
- In cases where an adult offender is sentenced to a period of incarceration in a Provincial facility, forward a copy of the statement to the appropriate correctional facility;
- Provide information to the victim and/or the parent/guardian on how to register with Correctional Services Canada or a Provincial Correctional Facility for information on the release of the offender;
- Where applicable, provide information on hearings under Section 745.6 of the *Criminal Code*, the Mental Health Review Board and the Parole Board, along with subsequent hearing outcomes.

### 7.7.6 Compensation for victims of crime

This program is available to victims of a violent crime who have suffered personal injuries or losses as a result of the crime. The intent of the program is to recognize that a crime has occurred and to assist victims with critical expenses that are directly the result of being victimized.

In cases of child abuse/neglect, eligible benefits may include funeral expenses, short term counselling (if not provided through the Department of Family and Community Services or parent insurance), medical expenses not covered by Medicare as well as pain and suffering. A parent/guardian must apply for compensation within one year of the incident, and there are limits placed on the benefits. An assessment will be made on a case by case basis.

In cases of child abuse/neglect, Victim Services Coordinators will:

- Provide the child and/or the parent/guardian an application form and explain the program including maximum benefits prescribed by law;
- Make referrals to registered therapists of the parent/guardian's choice for short term counselling as needed and arrange for direct payment (maximum 10 sessions).

### 7.7.7 Disclosure of child abuse by an adult survivor

- Whenever a Victim Services Coordinator is informed by an adult that he/she had been a victim of child abuse/neglect, the Coordinator should encourage that person to make a formal complaint of such allegations to the appropriate law enforcement agency;
- The Victim Services Coordinator will advise the Regional Director of the allegations of abuse/neglect and the action taken. Upon discussion of the case with the Victim Services Coordinator, the Regional Director may wish to advise law enforcement officials of the allegation;
- To ensure that other children are not placed or continue to be at risk, the Coordinator should make inquiries with the adult survivor to determine whether or not the alleged offender

is still associated with children (if the information is known). When a risk to children exists this information should be immediately and directly reported to the Access and Assessment Unit of the Department of Family and Community Services and the police, independent of any complaint made by the adult;

- Any action taken will be documented;
- If an adult survivor reports the incident to the police, he/she is eligible for Victim Services provided by the Department of Public Safety. In cases where the abuse occurred prior to 1971, victims are ineligible for compensation benefits.

Please refer to Sections 7.2, 7.3 and 7.4 for further detail on the Mandatory Reporting provisions.

## 7.8 Probation Services

Probation Services is the primary community-based correctional program responsible for the protection of society and provision of services to both adult offenders and young persons in the community. In cases of child abuse and neglect, Probation Services has a dual mandate, to ensure the safety of children under their supervision and to provide supervision of perpetrators of child abuse/neglect.

### 7.8.1 Pre-Sentence Reports

Probation Officers/Youth Workers are often called upon to provide background information on the accused person at the sentencing stage of Court proceedings. While the contents and procedural direction with respect to the preparation of Pre-Sentence Reports are strictly mandated by legislation and Departmental Policy, the following protocols were developed to assist with report preparation in cases where the adult offender/young person is awaiting sentence for an offence involving child abuse/neglect.

When preparing Pre-Sentence Reports in cases involving child abuse/neglect, the Probation Officer/Youth Worker will:

- Provide the Court with information concerning treatment programs and the adult offender/young person's motivation and willingness to participate;
- Consult with the Victim Services Coordinator to determine if a Victim Impact Statement has been/is being prepared and whether the victim and/or the non-offending parent/guardian is agreeable to being interviewed by the Probation Officer/Youth Worker;
- Where appropriate, attempt to contact the victim (non-offending parent/guardian if the victim is under 16 years of age) for the purposes of conducting an interview to determine impact on the victim and to obtain additional information which may assist the Court in determining an appropriate sentence;
- Ensure that the victim and/or the non-offending parent guardian are aware of support services offered by Victim Services and assist in establishing contact with the Coordinator as deemed necessary.

### 7.8.2 Pre-sentence supervision considerations

Probation Officers/Youth Workers may be called upon to supervise individuals involved in incidents of child abuse/neglect, who have been released in the community under Court imposed orders and conditions, but prior to any determination of guilt having been made by the Court. They include:

#### ***Recognizance Order***

In instances where a Recognizance Order with a condition to report to a Probation Officer/Youth Worker is imposed upon an accused person who has allegedly committed an offence involving child abuse/neglect, the supervising Probation Officer/Youth Worker will:

- Review the conditions of the Order with the accused, emphasizing any specific conditions restricting contact with the victim and the implications of violating the Order;
- Establish and maintain a reporting schedule with the accused;

- Notify the police if the adult offender/young person fails to comply with the conditions of the Recognizance Order.

#### ***Peace Bond***

When a Peace Bond is issued with a condition that an individual report to a Probation Officer/Youth Worker, the supervising Probation Officer/Youth Worker shall:

- Review the conditions of the Peace Bond with the individual, emphasizing any specific conditions restricting contact with the victim and the implications of violating the Peace Bond;
- Establish and maintain a reporting schedule with the individual;
- Establish contact with police to ensure ongoing communication occurs concerning the conditions of the Peace Bond;
- If the victim reports contact by the accused (where such restriction exists), notify the police of the condition violation.

### 7.8.3 Post-sentence supervision considerations

Once a finding of guilt has been made by the Court, an adult offender/young person may be released to the community under the supervision of a Probation Officer/Youth Worker through the imposition of various Court Orders. The types of community-based Orders commonly supervised by Probation Officers/Youth Workers include:

- Conditional Supervision Order: applies to young persons;
- Probation Order (with a condition to report): applies to both adult offenders & young persons;
- Conditional Discharge Order (with a condition to report): applies to young persons;
- Conditional Sentence Order: applies to adult offenders;
- Deferred Custody and Supervision Order: applies to young persons;

- Custody and Supervision Order: applies to young persons during the "community supervision" portion of the Order;

When an adult offender/young person involved in child abuse/neglect is released to the community under any of the above listed Court Orders (with a reporting condition), the Probation Officer/Youth Worker will:

- Develop a case plan, based on the information gathered from all collateral sources and the assessment results of the Level of Service Inventory (LSI-R and/or YO-LSI) and any other approved assessment tool;
- During the initial meeting and periodically thereafter, review with the adult offender/young person the conditions of the Order emphasizing specific conditions restricting contact with the victim (where applicable) and the implications of violating the Order;
- Develop a reporting schedule with the adult offender/young person;
- Where there is a treatment condition, refer the adult offender/young person for assessment and admission into the appropriate treatment program. Appropriate consent forms are to be completed prior to referral;
- Ensure that adult offenders/young persons are attending program sessions as required;
- As part of the case management process and where appropriate, the Probation Officer/Youth Worker will provide guidance on how/where to access available community resources which offer family support/counselling services;
- In cases where the supervision follows a period of custody, information concerning behavior and programs attended in custody will be obtained from the releasing facility and/or the Client Information System.

#### 7.8.4 Failure to comply

- In cases where an adult offender/young person who is under supervised Probation or a Conditional Discharge Order fails to comply with conditions of the Order, the Probation Officer/Youth Worker may consult with the Crown Prosecutor and/or may refer the matter to police for investigation and possible charges;
- In the case of a Conditional Sentence Order, if the victim advises of contact by the adult offender (where such restriction exists), the Probation Officer shall take appropriate action in accordance with legal authority and departmental policy;
- In cases where a young person is under a Conditional Supervision Order, Deferred Custody and Supervision Order, Custody and Supervision Order (community portion) or an Intensive Rehabilitative Custody and Supervision Order (community portion), and the victim advises of contact by the young person where such restriction exists, the Youth Worker will immediately investigate the breach allegation and take appropriate action in accordance with the provisions of the *Youth Criminal Justice Act* and departmental policy.

#### 7.8.5 Disclosure of abuse by an adult survivor

- Whenever a Probation Officer is informed by an adult that he/she had been a victim of child abuse/neglect, the Probation Officer should encourage that person to make a formal complaint of such allegations to the appropriate law enforcement agency;
- The Probation Officer will advise the Regional Director of the allegations of abuse/neglect and the action taken. Upon discussion of the case with the Probation Officer, the Regional Director may wish to advise law enforcement officials of the allegations;
- To ensure that other children are not placed or continue to be at risk, the Probation Officer should make inquiries with the adult survivor to determine whether or not the alleged offender is still associated with children (if the

information is known). When a risk to children exists, this information should be immediately and directly reported to the Access and Assessment Unit of the Department of Family and Community Services, and the police independent of any complaint made by the adult;

- Any action taken will be documented.

Please refer to Sections 7.2, 7.3 and 7.4 for further detail on the Mandatory Reporting provisions.

### **7.9 Secure Custody**

The Department of Public Safety, Community and Correctional Services Division, has overall responsibility for the secure confinement and the delivery of programs for young persons as defined under the *Youth Criminal Justice Act*.

Youth between the ages of twelve and seventeen years, inclusive, charged with or found guilty of committing an offence under the *Criminal Code* are subject to the provisions of the *Youth Criminal Justice Act*, which is administered by the Province. A young person may be detained prior to the imposition of sentence and upon being sentenced, held in custody for a period of up to 10 years. A sentence of secure custody means custody in a place or facility designated by the Lieutenant Governor in Council for the secure containment of young persons. A young person may also be detained in secure custody under the *Provincial Offences Procedures Against Young Persons Act*.

In cases of child abuse and neglect, secure custody facilities have a dual mandate:

- To ensure the safety of young persons under their care and supervision;
- To provide treatment of young persons in custody for an offence involving child abuse/neglect.

#### **7.9.1 Admission procedures**

As part of the admission process, the designated correctional staff person will:

- Inform the young person of all avenues available to address concerns including child abuse/neglect and personal safety issues. These safeguards include the right to private correspondence with the Ombudsman, Youth Advocate, Superintendent, Assistant Deputy Minister of Public Safety and Director of Community and Correctional Services, Department of Public Safety;
- Determine, to the extent possible, if the nature of the young person's offence involves child abuse/neglect, by reviewing all available information (i.e.: Warrant of Committal, Remand Order, Pre-Sentence Report, Client Information System);
- Determine, to the extent possible, if the young person is a victim of child abuse/neglect by reviewing all available information (i.e.: Pre-Sentence Report, Social History, Client Information System);
- Determine the relationship between the young person and the child victim or alleged and ensure that no communication takes place except in cases of approved treatment;
- Advise the Unit Manager of Operations of the circumstances so that all correctional staff are informed to ensure appropriate intervention in accordance with local and departmental policy;
- Ensure that the victim will not have contact with the abuser;

#### **7.9.2 Placement considerations**

Special consideration is given to those circumstances requiring specific interventions, placement and programming requirements including:

##### ***Young Persons in custody for offences related to child abuse/neglect:***

- Determine, to the extent possible, if the nature of the offence involved child abuse/neglect, by examining the Warrant of Committal, police

information, Client Information System and any other available source;

- Advise the Unit Manager of Operations of the circumstances upon determination that the offence or alleged offence involved child abuse/neglect, so that all shift rotations are informed;
- Ensure that precautions are taken to protect other young persons in custody, and that appropriate interventions will be invoked;
- Determine the relationship between the young person and the child victim or alleged child victim and ensure that no communication takes place except in cases of approved treatment.

***Young Persons in custody who were victims of child abuse/neglect in the community:***

Young persons may disclose previous abuse/neglect to staff members or, through the course of working with the youth, staff may suspect abuse/neglect has occurred while the youth was on a Reintegration Leave to the community or that he/she may be subject to abuse/neglect upon release. Should this occur, the following protocols apply:

- A staff member who suspects that a young person under the age of sixteen (16) has been a victim of child abuse/neglect in the community shall immediately and directly report his/her suspicion to the Department of Family and Community Services, Access and Assessment Unit, and immediately thereafter to the Superintendent/designate. For young persons over the age of sixteen (16), the suspicion shall be reported to the police;
- The Superintendent or designate shall confirm that the incident has been reported to Family and Community Services and follow up with written reports using the Child Abuse/Neglect Referral Form (see Appendix 13.2) on all suspicions of child abuse/neglect;
- The Superintendent or designate will contact the police agency and advise that Family and Community Services have been notified.

***Young Persons who become victims of child abuse/neglect while in custody:***

- A staff member who suspects that a young person is being abused/neglected by another staff member, non-institutional professional, volunteer or any other person shall immediately and directly report his/her concerns to the Department of Family and Community Services and immediately thereafter report it to the Superintendent or designate. A written report shall be submitted to the Superintendent of the secure custody facility;
- The designated staff member will notify the young person's parent/guardian, Social Worker, all appropriate departmental staff and the Youth Advocate;
- The Superintendent or designate shall determine if the young person is at risk and take immediate action to ensure safety while in custody;
- The Superintendent or designate shall confirm that the Department of Family and Community Services has been notified and follow up with a written report using the Child Abuse/Neglect Referral Form outlining the suspected child abuse/neglect;
- The Superintendent or designate will contact the appropriate police agency and advise that the Department of Family and Community Services has been notified;
- The Superintendent or designate shall advise the Regional Director and the Director of Community and Correctional Services of suspected child abuse/neglect. Steps will be taken to ensure that all pertinent information is provided to the police during the investigation of the incident;
- The Superintendent shall ensure that the alleged victim is offered appropriate counselling services.



### 7.9.3 Programming

- Where the offender is subject to the classification/conference process, a case plan will be developed taking into consideration treatment needs and release planning;
- The case plan may include services offered within the facility and referrals to outside community agencies offering appropriate services;
- Release planning shall include referrals for follow-up services and, in cases where community supervision is to follow a period of custody, Probation Services shall be advised of the upcoming release date.
- All relevant information shall be entered into the Client Information System.

### 7.9.4 Reintegration Leave

- Upon receipt of an application for Reintegration Leave and prior to making a recommendation, the institutional release committee, Superintendent or designate will review the young person's institutional behaviour, involvement in programs, demonstrated attitudinal change and potential risk to the community;
- As part of the community assessment and the decision making process, the secure custody facility will forward all pertinent information to Probation Services for their review and recommendations;
- Where appropriate, the child victim or parent/guardian will be contacted as part of the community investigation;
- The circumstances of some criminal offences, normally associated with but not limited to, sexual misconduct and serious violence, may cause negative public reaction to a young person's release and therefore, potential risk to the young person and/or community. In these cases, decisions for approval of a Reintegration Leave will be reserved until consultation has taken place with the Director of Operations, Department of Public Safety, or designate;

- When a Reintegration Leave is approved, the Superintendent/designate or the Regional Director shall prepare the Reintegration Leave Authorization, outlining terms, conditions and restrictions for the release. These restrictions will be explained to the young person prior to the release by designated staff;
- Where appropriate, the designated staff member will advise the victim and/or parent/guardian of the young person's impending release and the conditions of the release;
- Where a young person on Reintegration Leave is restricted from contact with a child victim and violates this condition, the authorization shall be revoked by the Superintendent/Provincial Director/designate. Under these circumstances, the young person may be arrested without a warrant and returned to custody.

Please refer to 7.2, 7.3 and 7.4 for further detail on the Mandatory Reporting provisions.

### 7.9.5 Youth Advocate

The Youth Advocate position was established by the Department of Public Safety for young persons in secure custody facilities. It was subsequently extended to youth at the residential treatment facility operated by Portage New Brunswick. The purpose of this initiative is to provide incarcerated young persons and others held in facilities contracted directly with the Department of Public Safety, with the opportunity to bring forward any concerns about staff or operational policies.

Any allegations of abuse/neglect are examined and reported by the Youth Advocate. There are two levels of advocacy, institutional and departmental.

At the institutional level the Youth Advocate operates in the following manner:

- The Youth Advocate makes regular monthly visits to the New Brunswick Youth Centre and less frequently to Portage New Brunswick, to meet with youth who make a request to speak with him/her;

- Between visits, young persons are permitted to make confidential calls to the Youth Advocate, or to send a confidential letter;
- A monthly meeting of the Youth Council at the New Brunswick Youth Centre also provides a place for concerns to be raised. The Youth Advocate attends these meetings, which are also attended by senior staff from the facility;
- If incidents are raised to the Youth Advocate involving allegations of child abuse/neglect, the Youth Advocate informs the Superintendent/Director of the facility, who immediately reports the suspicion to the Department of Family and Community Services. If the alleged incident occurred within the facility, the police are contacted to initiate a criminal investigation;
- The Youth Advocate's role and responsibilities are explained to the young person upon admission to the facility.

At the departmental level, the Youth Advocate reports to the Minister of Public Safety, and reports more regularly to the Deputy Minister of Public Safety. The Youth Advocate is encouraged and supported in efforts to raise departmental and cross-departmental issues, ones of a more systemic nature, to the attention of departmental staff for their assessment and action where appropriate.

### **7.10 Open Custody Services**

Young persons may be sentenced to a term of open custody in accordance with the *Youth Criminal Justice Act* and Provincial Regulations. Generally, open custody facilities can include a community residential centre, group home, child care institution, forest or wilderness camp or any other like place or facility as designated by the Lieutenant Governor in Council.

In New Brunswick, open custody is provided through a range of services including foster homes and group homes for young persons. Foster home and group home services are purchased from the Department of Family and Community Services. The Province of New Brunswick also contracts with Portage New Brunswick, a residential substance

abuse treatment facility, for the placement of young persons serving a sentence of open custody and requiring the intensive treatment offered within that program.

Youth Workers are responsible for the legal supervision of young persons in open custody facilities. Each young person also has a Social Worker assigned by the Department of Family and Community Services. Foster homes and group homes are licensed under standards approved by the Department of Family and Community Services. Please refer to Section 5.6 for further detail on Foster Homes and Children's Group Care Facilities.

#### **7.10.1 Reporting procedures**

The following guidelines have been developed for Youth Workers supervising young persons in open custody:

- Where any incident of child abuse/neglect is suspected within open custody facilities, the Access and Assessment Unit, Child Protection Services, shall be immediately and directly notified of the situation;
- The Regional Director shall also be notified of the suspicion;
- Once informed, the Regional Director shall confirm that the Department of Family and Community Services has been advised and follow-up with a written report using the Child Abuse/Neglect Referral Form (see Appendix 13.2) to the Department of Family and Community Services;
- In addition, the Regional Director will contact the police and the Director of Community and Correctional Services, advising that the Department of Family and Community Services has been notified;
- If necessary, the young person involved and other young persons confined to the open custody facility will be removed for their protection during the investigation;
- A copy of the investigation report prepared by the Department of Family and Community Services should be requested by the Youth Worker and forwarded to the Regional Director;

- A decision to continue using the open custody facility will be made in consultation with the Department of Family and Community Services.

Please refer to 7.2, 7.3 and 7.4 for further detail on the Mandatory Reporting provisions.

### **7.11 Adult Correctional Facilities**

The Department of Public Safety, Community and Correctional Services Division, has overall responsibility for the confinement of adult offenders and the delivery of programs within Provincial Correctional Facilities. The Division has the added responsibility of accommodating detained persons awaiting initial court appearances, accused persons awaiting adjudication, offenders awaiting their 30-day appeal period pending transfer to a federal penitentiary and Parole violators.

Offenders imprisoned for a period of less than two (2) years are confined in a place of confinement within the Province in which they are convicted. While the place of confinement would normally be a place other than a federal penitentiary, the Province of New Brunswick has entered into an agreement with Correctional Services Canada in which male offenders serving a term exceeding one (1) year are transferred to a federal penitentiary located within the Province. Offenders convicted of sexual offenses and receiving a sentence in excess of six (6) months are also subject to this transfer.

The following protocols have been developed to respond to adult offenders who have been charged and/or sentenced to offences involving child abuse and neglect:

#### **7.11.1 Admission procedures**

Upon admission of an offender to a Correctional Facility, the Admission Officer shall:

- Determine where possible, if the nature of the offence involves child abuse/neglect from the Warrant of Committal, Remand Order, Client Information System and any other collateral source of information;
- Upon determination that the offence or alleged offence involved child abuse/neglect, advise

the Shift Supervisor of the circumstances so that all shift rotations are informed, and so that case planning activities and appropriate communication guidelines are enforced to protect the victim;

- Determine the relationship between the adult offender and the child victim or alleged child victim to ensure that appropriate precautions are taken to protect the child victim;
- In cases where child abuse/neglect has been alleged or has occurred, to ensure protection of the child victim there will be no communication between the offender and the child victim or alleged child victim. This includes visits, telephone use, correspondence or any other form of communication. The only exception to this would be for approved treatment programs.

#### **7.11.2 Programming**

- In cases where intra-familial abuse/neglect has been determined, officials from the Department of Family and Community Services should be contacted and information requested to determine if any current prohibitions exist concerning offender contact with any family members or if any family treatment strategies are in place or being considered that may include the offender;
- Offenders will follow the normal case planning/classification process, including where available, referral to community agencies offering treatment to child abusers and victims of child abuse/neglect.

#### **7.11.3 Temporary Absence Program**

- Upon receipt of an application from an offender for the Temporary Absence Program and prior to making a recommendation, the institutional classification committee/case manager shall review the offender's institutional behavior, involvement in programs, demonstrated attitudinal change and potential risk in the community;
- As part of the community assessment, the designated correctional staff member will attempt to contact the victim/parent/guardian

(either directly or through the Victim Services Coordinator) and their opinions about the potential release will be considered as part of the overall decision-making process;

- The input/recommendation from Probation Services shall be sought as part of the community assessment;
- "High Profile" cases will be considered only after consultation with the Regional Director and the Temporary Absence Coordinator/Operational Consultant;
- When a Temporary Absence is approved, the Superintendent/Regional Director shall prepare the Temporary Absence certificate, outlining terms, conditions, and restrictions for the release. The designated correctional staff member shall explain all conditions to the offender prior to release;
- The Police Force in the area of the offender's release will be informed of his/her presence in the community;
- The Department of Family and Community Services will be informed of the release if they are involved in follow-up with the offender and family;
- In cases where the victim reports having been contacted by the offender (where such restriction exists), the Temporary Release may be revoked by the Superintendent/Regional Director.

#### **7.11.4 Offenders re-entering the community prior to anticipated release date**

- Where appropriate, the Superintendent or designate will advise the victim/parent/guardian of the offender re-entering the community prior to the anticipated release date. This could occur in cases of federal parole, temporary absence or escape from custody.

#### **7.11.5 Offenders escaping custody**

- When an offender escapes custody or becomes unlawfully-at-large, the Superintendent or designate will immediately inform the police that this is a child abuse/neglect matter and request the police to advise the victim/parent/guardian of the escape;
- The Department of Family and Community Services should also be notified when they are involved in the case.

#### **7.11.6 Disclosure of abuse by an adult survivor**

- An adult offender who discloses that he/she has been abused/neglected as a child will be encouraged and enabled to contact a police agency to file a formal complaint. The correctional staff member should advise the Superintendent of the allegations of abuse/neglect and the action taken. Upon discussion of the case with the employee, the Superintendent may wish to advise law enforcement officials of the allegations;
- To ensure that other children are not put at or continue to be at risk, the correctional staff member should make a cursory check with the adult to determine whether or not the alleged offender is still associated with children (if the information is known);
- Where a risk to children is suspected, this information shall be immediately and directly reported to the Access and Assessment Unit of the Department of Family and Community Services and the appropriate law enforcement agency independent of any complaint made by the adult;
- Any action taken will be documented.

Please refer to 7.2, 7.3 and 7.4 for further detail on the Mandatory Reporting provisions.



## 8.0 Department of Health and Wellness Intervention Guidelines

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### 8.1 Introduction

The Department of Health & Wellness (DHW) is multi-faceted and provides a full range of health related services. Staff and physicians working in program/service areas may, in the course of their work, encounter situations in which child abuse or neglect is suspected. Service delivery is organised under the responsibility of DHW or Regional Health Authorities (RHA) either through direct or contracted services. They manage and operate specific programs/services such as Addiction Services, Extra Mural Program, Health Centres, Hospitals, Mental Health, Physicians, Public Health and Tele-Care; all provide some services to families and children playing a key role in the prevention, identification and referral of child abuse and neglect situations.

#### 8.1.1 Addiction Services

Addiction services are provided to New Brunswickers who are affected by situations of abuse of drugs, alcohol or gambling. Nurses and social workers provide outpatient and inpatient

services. It is anticipated that a number of clients are likely to disclose situations of child abuse or neglect.

#### 8.1.2 Extra Mural Program

The Extra Mural Program provides comprehensive healthcare services to New Brunswickers in their home and/or community. Nurses, occupational therapists, physiotherapists, registered dieticians, respiratory therapists, social workers and speech language therapists provide core services; these services include assessment, intervention (treatment, education, and consultation), service planning/coordination and Long Term Care Program assessments. It is anticipated that a number of the children and adolescents to whom care is being provided would be a victim of child abuse or neglect.

#### 8.1.3 Health Centres

Health Centres provide primary health care to the population of a designated area. Services range from individual consultation with a specific professional and could include group sessions or other services as provided by the Centre. It is anticipated that a number of the children and adolescents to whom care is being provided are a victim of child abuse or neglect.

#### 8.1.4 Hospitals

Hospitals provide a range of health care services to clients who are either receiving care as inpatients or via ambulatory services such as clinics, outpatient departments or emergency services. It is anticipated that a number of the child and adolescent victims of child abuse or neglect may first be identified in the emergency units, clinics or within units of care.

#### 8.1.5 Mental Health Centres

Community Mental Health Centres are established in every health region in the province along with satellite centres in outlying areas. Whereby the Community Mental Health Centres treat children and adolescents with mental, emotional and behavioural disorders, it may be anticipated that a number of these individuals could be a victim of child abuse/neglect. Community Mental Health

Centres may be requested to assess and/or treat victims seriously affected by child abuse as a result of referrals from Family and Community Services, physicians, parents, self or others concerned.

### 8.1.6 Physicians

Physicians, either in their offices, at the hospital or in the community may be the first point of contact for many children who are victims of child abuse, neglect and/or sexual abuse.

### 8.1.7 Public Health

Public Health nurses, nutritionists, physicians and inspectors play a key role in the network of services to abused and neglected children. These professionals, by virtue of their broad involvement and non-threatening working relationships with individuals, families and communities are in unique front-line positions to make a significant contribution to primary prevention, early identification, and referral. In cases of abuse and neglect, Public Health works collaboratively with FCS to provide interventions based on the identified care plan.

### 8.1.8 Tele-Care

Tele-Care provides New Brunswickers with bilingual telephone triage and advice for non-urgent health conditions, 24 hours a day, 7 days a week, through a toll-free line. Poison Information, Rabies Information and West Nile Virus Information are examples of information provided by Tele-Care Services. It is anticipated that a number of callers to Tele-Care could disclose situations of child abuse or neglect.

## 8.2 Administrative Structure

Health care staff must be cognizant of and understand their obligations under several pieces of New Brunswick legislation. Mandatory reporting of child abuse and/or neglect is legislated under the *Family Services Act*. Additional reporting responsibilities may also be required under *An Act Respecting Health Professionals*, the *Medical Act*, and the *Education Act*.

The Department of Family and Community Services (FCS) is mandated under the *Family Services Act*,

to provide protection services to children in New Brunswick. Child Protection Services are provided to children under the age of 16 and to disabled persons up to the age of 19.

Under the *Family Services Act*, it is mandatory for any person (including professionals) to report any situation where the security or development of a child is suspected to be in danger. These reports originate from concerned citizens and professionals and are directed to the Access and Assessment unit in the Department of Family and Community Services.

Child Protection Services investigate reports through FCS regional offices. The delivery of child protection services is based on the "Child Protection Services Practice Standards and Guidelines for Child Protection Services".

It is important that DHW and/or RHA employees or staff under contract be familiar with the Child Protection Services within their region. For this purpose, professionals are encouraged to contact FCS in order to become familiar with how referrals/reports are received and processed.

Following the Koster-Hillier Report in 1996, the Minister of the then Health and Community Services (HCS) established community based Child At Risk Teams (CART). The purpose of CART is to enhance cooperation and collaboration amongst partners in the provision of coordinated services to children at risk for abuse and neglect. Regional Child At Risk Teams provide the community-based structure to ensure a coordinated response, and the DHW encourages participation on the CART teams. Depending on the service or program, participation may range from a consultative role to a more intensive involvement.

In specific circumstances, additional Acts stipulate mandatory reporting of the suspected or known abuser to a specific Minister or a professional regulatory body. DHW and/or RHA employees or staff must understand their obligations specific to *An Act Respecting Health Professionals* and the *Education Act*.

The Minister of Education is responsible for the safety and well-being of all public school students and is accountable for maintaining the good

reputation of the public education system. In July 2001, a section was added to the *Education Act*, making it mandatory to report whenever “school personnel” subject a child (under the age of 19) to actions which have, or are likely to have, “an injurious effect on the (child’s) physical, mental, social or emotional well-being”. This duty to report to the Minister of Education applies to school personnel and to other professionals who are not school staff.

*An Act Respecting Health Professionals* received Royal Assent in 1996 and the *Medical Act* was correspondingly amended in 1997. Since the passage of *An Act Respecting Health Professionals*, the Act’s requirements have been incorporated into all new health legislation. These acts impose a legal obligation on health professionals to report any cases of alleged sexual abuse by other health professionals to that professional’s regulatory body. Failure to file a report when the professional knows the alleged abuser’s name constitutes professional misconduct under their own professional legislation.

### 8.3 Administrative Practices

- A. Each program or service delivery area managed by the DHW or by RHAs either directly or under contract should have access to a written, readily available policy for the identification and treatment of children who are suspected/victims of abuse and neglect.
- B. The policy shall include:
  - a summary of relevant provincial legislation including:
    - 1) *statutory obligations of the Family Services Act to report children when security and/or development may be in danger, as well as information related to the legal protection afforded to individuals reporting in good faith;*
    - 2) *all other relevant legislation.*
  - the process to be followed by employees and medical personnel to recognise and immediately report suspected child abuse and neglect to FCS Child Protection Services;
  - documentation requirements;

- criteria to determine required and desirable medical and social investigations as determined by the roles and responsibility as outlined by the program/ services. Social investigations should be done cooperatively between the Child Protection Services worker and social workers within the program/service as appropriate;
  - the process to report a suspected or known abuser if the person is regulated under the *Education Act*, the private acts amended by *An Act Respecting Health Professionals*, and those passed subsequent thereto, or the *Medical Act*.
- C. As a general rule, only those cases where an emotional problem is suspected will be referred to the Mental Health Centre.
  - D. If there is doubt as to the seriousness of the matter, consultation with Child Protection Services should be carried out to determine whether or not a referral should be made.
  - E. Employees/staff may suspect or witness abuse through the course of their work with children, and disclosures of past or current abuse may result from therapeutic/professional involvement. If the person disclosing past or current abuse is an adult client and suspects that the perpetrator is abusing other children, it is preferable for the adult client to report the suspicion directly to Child Protection Services. However, this does not remove the obligation from employees to report (or to refer in the case of a child) the suspected child abuse/neglect situation to Child Protection Services.
  - F. Each program or service delivery area shall identify an employee who will act as a liaison between Child Protection Services and their individual service or program, in order to facilitate exchange of information between the two program areas.

### 8.4 Reporting Responsibility

All staff of the DHW and those of RHAs including staff under contract have the same obligation to report all suspicions of abuse and neglect to Child Protection Services. Physicians share the same



obligations and responsibilities pertaining to child abuse and neglect whether suspected or actual.

Each community, institutional service or program delivered within the DHW and the RHAs is responsible to provide employees with training and education in relation to the child abuse/neglect protocols including the legal obligations and the referral process.

RHAs should establish a regional child abuse team with representation from various facilities/programs to assume responsibility for:

- liaising with the communities and concerned agencies, including education;
- assisting Child Protection Services in making detailed family assessments, as appropriate;
- recommending appropriate medical and psychosocial treatment;
- developing a continuing education program for all staff to familiarise them with the indicators of child abuse/neglect and ensure they are knowledgeable of the procedures to be followed;
- promoting programs to prevent child abuse/neglect;
- promoting programs for services to parents.

Referrals of child protection situations can be made during normal working hours with the Access and Evaluation Unit, in each region. Referrals of child protection emergency situations after normal working hours or on weekends will be received through the "After Hours Emergency Social Services" (AHES).

Employees and physicians in all program/service areas shall:

- be familiar with the indicators of child abuse and neglect as well as the definitions of child abuse/neglect and procedures for referral and follow-up;
- make a referral to Child Protection Services immediately upon identifying a situation in which child abuse or neglect is suspected;
- consult the local Access and Assessment Unit when unsure if the situation warrants a referral or not;

- consider the option to request feedback on the outcome of the investigation. This option may be used to support personal professional closure and/or continuity of care;
- document in accordance with appropriate legislation such as the *Hospital Act Regulations* Section 20, and professional standards. Documentation should include the following:
  - observations or reports of the child's physical condition: note bruises, abrasions, etc;
  - statements made by an accompanying adult on the possible causes of the child's condition, record this and other statements in quotation marks along with the speaker's identity;
  - information volunteered by the child/teen regarding his/her condition, record this in quotation marks and note that the information was volunteered;
  - the description of the child's behaviour with parents and /or other adults whom the child encounters; note if there is a difference in response to specific individuals;
  - the date and time that Child Protection Services were notified and the time of response to the referral, if known;
  - the name of the child protection worker when a child is in Protective Care; and
  - all other relevant information.
- Report the suspected or known abuser when mandated by the *Education Act*, the private acts amended by *An Act Respecting Health Professionals*, or those passed subsequent thereto, or the *Medical Act*. The identity of the victim is to be protected and released only when required upon written consent of that person. For minors or persons incapable of giving consent, written consent is to be obtained from that person's parent, guardian, or representative.

The identity of the referral source/s is/are protected under the *Family Services Act*. Disclosure can be ordered through the course of judicial proceedings. In situations of ongoing care, it may be in the best interest of the professional/client

relationship for professionals to voice their concerns to the family. If doubts exist that voicing this concern may increase the abuse, neglect or impede the investigation, a consultation with the Child Protection Service worker is indicated.

#### **8.4.1 Non-professional conduct by school personnel**

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined as, “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years”.

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education’s Policy 701 on its policy website.

#### **8.5 Procedures for Referral and Follow-up**

1. A referral to Child Protection Services shall be made immediately upon identifying a situation in which child abuse/neglect is suspected.

An RHA employee or staff may contact the liaison person to discuss the appropriate procedures to follow in filing a report with Child Protection Services.

2. A verbal referral should immediately be followed by a written referral by using the appropriate referral form. The referral should include:

- child’s complete name and birth date;
- name and address of parent/guardian;
- details of suspected abuse/neglect;
- the name of the person who suspected the abuse/neglect.

In situations where reports/referrals about a suspected case of child abuse/neglect are being made to one of the DHW or RHAs’ program or service areas, the employee will advise the reporting source that these situations will be brought to the attention of Child Protection Services. The reporting source is to be advised that they must contact Child Protection Services directly to refer. This is not a double referral, but simply a precautionary step to ensure that the situation does not go unreported. The first duty to report however, lies with the originating source of referral.

3. DHW or RHA staff must not interview the child or the child’s family regarding the abuse/neglect. This is the responsibility of the Child Protection Worker or the police. However, if the child wishes to talk about what has occurred, employees should remain responsive, supportive and open. Assessments as part of the service mandate may become part of the investigative findings of the Child Protection Worker.

Children victims of child abuse/neglect are accepted for service in a Mental Health Centre for assessment and/or treatment when a serious emotional and behavioural problem is suspected. Initial screening/assessment will occur as described in the Guidelines for the Delivery of Services to Clients. The urgency of the intervention will depend on the level of need determined by the initial screening/assessment interview. Referrals should not automatically be made to Mental Health Centres, they should be in accordance with the guidelines developed between Mental Health and Child Protection Services for assessment and treatment referrals.

Public Health Services and Child Protection Services will coordinate their efforts in carrying out a health assessment of a child suspected of abuse/neglect. Where appropriate, assessments may be carried out jointly and there may be sharing of relevant information. If required, medical expertise shall be obtained by the Child Protection worker.

4. When a referral to Child Protection Services is to be made, the referral source may contact the parent or the guardian. A consultation with the Child Protection Service worker may be warranted to determine the appropriate timing of such an action. This consultation is to be considered when the employee or staff questions the impact of contacting the parent or guardian to avoid increasing the abuse/neglect towards the victim or suspected victim and/or to avoid impeding the investigation. Child Protection Services or the police may contact the parent.
5. The parent/guardian must also be contacted if the incident of child abuse is suspected to have occurred:
  - a) by an employee while the child is receiving services within the identified program;
  - b) by a third party (not an employee) while the child is receiving services within the identified program.
6. Reports of sexual abuse, physical abuse and neglect may also be made to the police either simultaneously or subsequently;
7. According to the specific procedures for programs/service areas, the appropriate supervisors, directors or managers are to be notified of all instances of reported child abuse and neglect.
8. The referral source shall maintain an accurate record of the suspected abuse/neglect. Accurate records are necessary, should they be required to give evidence in Court, and this should include:
  - when abuse/neglect was noticed;
  - what behaviours, or characteristics were noticed;
  - the time and the date the referral was made to Access and Assessment, Child Protection Services;
  - to whom the report was made;
  - the time and the date the Child Protection Worker responded to the referral, if known;
  - any comments that the child voluntarily shared with the staff person;
  - date and time consultation was held with the director or immediate supervisor.
9. A social worker from Child Protection Services, upon presenting credentials identifying himself/ herself as a designated person acting on behalf of the Minister of FCS, can interview and/or remove a child without parental consent regardless of the source of the initial referral. It is the social worker's responsibility to contact the parents when appropriate.
10. An employee may be present during the interview to provide support to the child, if the child so desires. This employee is not to participate in the interview process.
11. The FCS social worker determines if there is enough information to conduct an investigation and whether or not police should be contacted. It is also the FCS social worker's responsibility to notify parents should an investigation be necessary.
12. Where there are no grounds to investigate, the FCS social worker may make recommendations for possible follow-up actions that may include direction to a DHW employee regarding subsequent communication with the child/parent.
13. If the alleged abuser is regulated under a private act amended by An Act Respecting Health Professionals, or those passed subsequent thereto, the Medical Act or the Education Act, the health professional shall prepare a report in the manner indicated in the legislation and submit it to the governing body of the alleged abuser.
  - 13.1 For adult victims of sexual abuse by a health professional, the name of the patient or client can only be disclosed by the

reporting professional upon written consent of that person. For minors or persons incapable of giving consent, written consent of the minor's parent, guardian, or representative is required.

**Note 1:**

Any service provider may retain a service responsibility for situations that have been referred to Child Protection Services. Child Protection Services will inform the service provider of the results of the investigation and will provide relevant information and updates on family progress where the service provider continues to work with the child or family as appropriate.

**Note 2:**

Public Health provides a number of preventive services to *Priority Families* as defined by Early Childhood Initiatives Program (ECI) program eligibility criteria. ECI is a voluntary program that assists parents to enhance their parenting skills and knowledge of child development. Participation in ECI is not an indication of potential or actual child abuse. Public Health employees will report any child abuse and neglect including suspicions to Child Protection Services.

## **8.6 Physician Guidelines**

Physicians, either in their offices, at the hospital or in the community, may be the first point of contact for many children experiencing child abuse, neglect and/or sexual abuse. The following are guidelines for managing child abuse/neglect situations:

### **8.6.1 Referral and Follow-up**

1. The primary concern must be the protection of the child. The doctor's first obligation is to ensure the safety of the victim by involving the Child Protection Services of the Department of Family and Community Services.
2. Physicians are required to personally report cases of suspected child abuse/neglect to Child Protection Services.
3. All physicians who provide medical care for children should familiarise themselves with the indicators of abuse and neglect.

4. In all situations of child abuse and neglect, suspicion is the first step in identifying child abuse.
5. In suspected cases, the physician should record:
  - observations of the child's physical condition - for example:
    - colour and size of bruises, abrasions, etc.;
    - provide drawings and/or photographs if available;
  - statements made by the adult accompanying the child, on the possible causes of the child's condition;
  - comments made by the child about his/her condition;
  - the child's behaviour with parents, doctor and other adults;
  - the treatment given and any recommendations for follow-up;
  - the time and date Child Protection Services were notified and time of response if known.
6. The physician is not obligated to inform the family that a referral to Child Protection Services will be made. It may be in the best interest of the physician/patient relationship for physicians to voice their concerns to the family; however when in doubt that such action may increase abuse/neglect or impede the investigation, a consultation with the Child Protection Service worker is recommended.

In such cases, Child Protection Services or the police may contact the parent.

7. Verbal referrals to Child Protection Services shall be followed by written referrals as soon as possible, using the appropriate form and should include:
  - the child's complete name and birth date;
  - name and address of parent/guardian;
  - details of the suspected abuse/neglect.

8. In serious child abuse/neglect, the doctor is encouraged to contact the police in addition to reporting to the Child Protection worker recognising that Child Protection Services will advise the police of all reports of sexual abuse, serious physical abuse or serious neglect situations.
9. If the physician allows his/her name to be revealed and this information is provided to the family, it is the responsibility of the Child Protection Worker to advise the physician.
10. When a request for a medical examination is received from a Child Protection Worker, the worker shall provide the doctor with the credentials signed by the Minister of Family and Community Services giving authority to act under the Family Services Act to protect the child. The Child Protection worker has the authority to request both the examination and a written report of its results, without parental consent.
11. The Child Protection Worker may request that the parents bring the child for a medical examination. Under such circumstances, the parents will be asked to provide the worker with their written consent in order for the physician to release the results of the examination to the worker.
12. The physician will be advised when a court order is being sought and his/her testimony may be required. It is possible that the name of the physician may be revealed through the court process. In serious abuse and neglect cases referred to the police, the medical evidence may be very relevant to the case, and thus, the physician's name will be provided to the investigating police officer.
13. In applicable situations, as mandated by the Education Act, physicians are required to report to the Minister of Education when reasonable grounds exist to believe that a member defined as "school personnel" has engaged in non-professional conduct towards a pupil or other person under the age of 19.
14. If the suspected or known abuser is regulated under an act amended by An Act Respecting Health Professionals, or those passed subsequent thereto, or the Medical Act, the physician shall submit a report to that professional's regulatory body.
  - 14.1 For adult victims of sexual abuse by a health professional, the name of the patient or client can only be disclosed by the reporting professional upon written consent of that person. For minors or persons incapable of giving consent, written consent of the minor's parent, guardian, or representative is required.

Note:

Staff in the physician's office should be aware of applicable policies and procedures in relation to obligations under the *Family Services Act*, the *Education Act*, the *Medical Act*, and the private acts amended by *An Act Respecting Health Professionals* or those subsequent thereto.

## 9.0 Department of Education Intervention Guidelines

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### 9.1 Introduction

School personnel are sometimes the only persons in a position to recognize that a child is in need of protection. Children who come to school with injuries (physical and emotional) can be identified if school staff is aware of the indicators of abuse and neglect. For some children, their school may be the only place where they feel safe and where it is possible for them to have healthy relationships.

The Child Victims of Abuse and Neglect Protocols are intended to help service providers, in this instance school personnel, deal with abuse and neglect which is not perpetrated by a professional in the school system. In those instances, school personnel shall defer to Policy 701 - Policy for the Protection of Pupils in the Public School System from Misconduct by Adults (Pupil Protection Policy).

### 9.2 Roles

The district superintendent is responsible for ensuring that all district and school personnel are familiar with and understand their responsibilities under the Child Victims of Abuse and Neglect Protocols.

All school personnel, including teaching and non-teaching staff, play a role in the identification, disclosure, and prevention of neglect and abuse of children. All personnel have a legal obligation to personally report cases of suspected child abuse or neglect to Child Protection Services without delay. It is critical that school personnel are

aware that the mere suspicion of child abuse necessitates a report and that investigation of the allegation is the responsibility of Child Protection Services. Schools could inadvertently jeopardize the integrity of an investigation by acting beyond the scope of their authority.

Each school should have a procedure for addressing child abuse or neglect situations. Depending on the size of the school, the principal may delegate certain responsibilities in order to coordinate the school’s efforts and action plans.

#### 9.2.1 The principal’s responsibilities are:

- to ensure that all school personnel know and understand their responsibilities under the Child Victims of Abuse and Neglect Protocols;
- to ensure that staff is aware of its legal obligation under the *Family Services Act* and the *Education Act* to report cases of suspected child abuse or neglect;
- to develop, in consultation with staff, a clear process for making referrals to Child Protection Services;
- to ensure that the report of suspected abuse or neglect is filed with Child Protection Services for their investigation;
- to ensure staff and students are well-informed about issues related to child abuse and neglect;
- to ensure that students are aware of the duty of all professionals to report disclosed incidents of abuse. This must be undertaken in an age-appropriate manner and in accordance with students’ comprehension levels such that students know who and when to tell; and
- to ensure that all staff and students know how to access assistance when required.

In cases where there are custody issues, principals must ensure that<sup>1</sup>:

- Parents are notified annually that they must make the school aware of any serious custody issues that could impact on the safety of their child.

<sup>1</sup>For additional information, please refer to *Policy 710 - Release of Students and Access to Student Information*  
<http://www.gnb.ca/0000/policies.asp>

- Upon receipt of appropriate documentation from parents/guardians, staff members are aware of individual cases where a child may be at risk of being unlawfully taken from school premises and a plan is in place to protect the child, as appropriate.
- Information, such as home address, phone number or place of work, must not be disclosed about one parent to the other, unless consent for information sharing has been received.
- Access to student records includes access by a non-custodial parent unless the parent is barred from access by a court order.
- When a person who is authorized to pick up a child is not familiar to school staff, the principal must ensure that proof of identity is provided.

Lastly, school staff is strongly encouraged to participate on the **Child at Risk Teams**. Participation may range from a consultative role to more intense involvement depending on the situation. Meeting the needs of children suffering from abuse requires the collaboration of all partners so that the provision of supports and services can be looked at holistically.

### 9.3 Duty to report

According to the *Family Services Act*, every person has a duty to report child abuse and neglect:

*30(1) Any person who has information causing him to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused shall inform the Minister of the situation without delay.*

Additionally, every professional has a duty to report abuse or neglect:

*30(3) A professional person who acquires information in the discharge of the professional person's responsibilities that reasonably ought to cause the professional person to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused but who does not inform the Minister of the situation without delay commits an offence.*

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined as, "conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years".

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education's Policy 701 on its policy website.

Where the allegation pertains to a member of the school personnel and there are sufficient grounds to warrant investigation by the school district, the school district investigator prior to commencing an investigation should contact the child protection worker to request that the school district investigator(s) be granted observer status for relevant interviews conducted by Family and Community Services.

### 9.4 Making referrals

The school employee who suspects abuse or neglect must report his or her suspicions immediately and directly to Child Protection Services. Consulting with the principal, guidance counselor or other staff does not remove the obligation of school personnel to make a direct and personal report to Child Protection Services.

A verbal referral to Child Protection Services shall be followed by a written referral as soon as possible using the Child Abuse/Neglect Referral Form (see Appendix 13.2).

The referral should include:

- the child's complete name and date of birth;
- the name and address of the parent or guardian;
- details of the suspected/disclosed abuse or neglect; and
- the name of the individual who suspects abuse or neglect or to whom a disclosure has been made regarding abuse or neglect.

Although it is generally the role of the child protection worker to assess the referral and, if criminal activity is suspected, to contact the police for joint investigation, school personnel are also obligated to contact the police where criminal activity is suspected.

If abuse is perpetrated by another student, the scenario will determine whether a report is made to Child Protection Services. Conflicts or bullying on school grounds can usually be resolved through Policy 703. However, if a student sexually abuses another child, Child Protection Services must be contacted.

The school employee should maintain an accurate record of the suspected/disclosed abuse or neglect should he or she be required to give evidence in court. The record should contain:

- when the abuse or neglect was noticed or a disclosure made;
- what specific indicators were noticed;
- the time and date the referral was made to Child Protection Services and to whom the report was made;
- whether or not the police were notified;
- the time and date the Child Protection Worker responded to the referral if applicable; and
- any comments that the child voluntarily shared with the school employee.

When a referral to Child Protection Services is made, Child Protection Services or the police generally contact the parent/guardian. School personnel should confirm with the child protection worker whether they should contact parents/guardians.

### **9.5 Disclosure**

If a child discloses abuse to a school employee, the employee should remain responsive, supportive and open if the child wishes to continue talking. However, the school employee should abstain from interviewing the child in detail. This is the role of the Child Protection Worker or the police. Additionally, the Child Protection Worker:

- must present credentials identifying him or her as a designated person acting on behalf of the Minister of Family and Community Services prior to interviewing a child in or on school property;
- can interview students without parental consent regardless of the source of initial referral;
- may, in some cases, remove a child from the school premises in order to conduct an investigation to determine if the child is in need of protection.

If the child prefers, a person whom the child trusts may be present during the interview. That person is not expected to participate in the interview, but rather act as a supporter for the child. On the other hand, no child should feel obligated to respond to questions from the Child Protection Worker about his or her family in the presence of a third party.

In the case of physical or sexual abuse incidents, the child must be protected from the alleged perpetrator by keeping the child at school until a Child Protection Worker arrives. If a child is kept at school, a school employee must remain with the child at all times.



## 9.6 Case management

School employees may be involved in developing the case plan with Child Protection Services and shall be made aware of their role with regards to other professionals providing services to the child and his or her family.

If school employees have any questions about the decisions or actions taken by Child Protection Services or the police, the matter can be discussed with the Child Protection Worker, his or her supervisor, or the investigating police officers.

If specific concerns remain unresolved, they are to be documented and forwarded to the Regional Director of the Department of Family and Community Services, or to the Chief of the investigating police force.

No administrative or other sanctions will follow any inquiry a school employee might have made on the report that he or she initiated.

## 9.7 Education and prevention programs

The Department of Education has the opportunity to effectively break the cycle of abuse through preventative education for students and appropriate referral to support services for young people.

The Department is currently supporting or offering the following education/prevention programs in schools:

**Health Education Curricula** for each grade level K-12. The units at each level maintain an active, student-centered approach to learning, address health and social problems of youth, teach how to reduce health-risk behaviours and maintain physical, emotional and psychological well-being.

### **Personal Development and Career Planning K-12.**

The personal development aspect of the program involves outcomes, which enable learners to explore their specific personality traits and skills, take responsibility for their behavior, develop positive self-esteem, and learn how to interact effectively with others.

**Making Waves** is a program designed to help teens recognize the warning signs and effects of dating violence and to avoid becoming victims.

The Making Waves team believes that it is important to involve young men and women in finding solutions that will speak to their peers. Facilitators encourage teens to play a leading role in creating an environment in their schools where violence and abuse are not acceptable.

**Peer Helper Programs** exist in several high schools in the province.

**Leadership Programs** exist in some high schools in the province.

**Policy for the Protection of Pupils in the Public School System from Misconduct by Adults (Policy 701)** helps to ensure students are protected from abusive behaviour by adults including physical, sexual and emotional abuse and discrimination.

**Positive Learning Environment Policy (Policy 703)** requires each school to establish a process for fostering positive learning and working environments.

**Release of Students and Access to Student Information (Policy 710)** addresses issues related to child custody, access to student information and the physical release of students into the care of persons external to the school system.

Schools hold theme weeks, have awareness campaigns (e.g. health fairs, resource speakers, etc.) and other means of providing promotion and education to staff and students. These are often a collaborative effort by schools and community organizations. Some examples include:

In collaboration with the Muriel-McQueen Ferguson Foundation, a video entitled **He Says, She Says** was produced as part of the Creating Peaceful Learning Environments Project in schools. This video was sent to all high schools and alternate sites at a training session by the Department of Education on a new resource **Focus on Harassment and Intimidation: Responding to Bullying in Secondary Schools**. Follow-up and support for local implementation of these resources, which support Policy 703 (Positive Learning Environment Policy) is ongoing for these schools by districts.

The Joint Provincial Committee on Behavioural Issues was formed as a cooperative effort of the Department of Education, all school district Positive Learning Environment Coordinators, the NBTA ad hoc discipline group, and representatives of the anglophone education group (superintendents and directors of education). This committee has as its focus the promotion of Policy 703 in schools.

Red Cross Abuse Prevention Services has trained a number of teachers in their program for students ***It's Not Your Fault*** during summer institutes. Additionally, each year there are a number of summer institutes focused on issues of bullying and harassment awareness, prevention and intervention.

Information is available for parents, students and educators at the following:

<http://www.gnb.ca/0000/anglophone-e.asp#2> and information is available in all schools regarding the ***Parents Help Line*** and ***Kids Help Line***.



## 10.0 Department of Training and Employment Development Intervention Guidelines

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The Department of Training and Employment Development has a limited scope of intervention in Child Abuse issues as children constitute a very small portion of its clientele. However, through the New Brunswick *Employment Standards Act*, the Department is responsible for authorizing the employment of children. In addition, the Minister of Training and Employment Development is responsible for the Human Rights Commission, which administers the New Brunswick *Human Rights Act*.

The Department also recognizes it has a responsibility to participate in government’s concerted efforts to eradicate the impact of child abuse. Information on child abuse, an issue that requires mandatory reporting, will be provided to staff in order to enhance awareness among staff.

The Department will take the following measures:

- Post links on its Intranet site referring to the Child Victims of Abuse and Neglect Protocols.
- Make sure all employees are aware that
  - The *Family Services Act* requires everyone to report to the Department of Family and Community Services any information which causes them to suspect that a child has been abused;
  - Mere suspicion of child abuse creates a statutory obligation to report; and
  - Failure to report a suspicion of child abuse to the Department of Family and Community Services may constitute an offence under the *Family Services Act*.
- Display or make available any information provided by Government on the issue of child abuse.

### 10.1 Employment Standards Branch

The Employment Standards Branch is responsible for promoting, overseeing and enforcing the application of New Brunswick’s *Employment Standards Act* and accompanying Regulations. The legislation provides for standards of work that apply, as a minimum, to all employer-employee relationships in the province. These standards address **employment of children** as well as many other issues such as minimum wage, hours of work, vacation time and pay, public holiday pay, termination notice and pay in lieu thereof, leaves, etc.

### 10.2 Employment of Children

The *Employment Standards Act* places some restriction on the employment of persons who are under the age of sixteen (16) years. An employer is prohibited from employing a person who is under the age of sixteen (16) years in employment that is or is likely to be unwholesome or harmful to the person’s health, welfare or moral or physical development.

Additionally no employer shall employ a person who is under the age of sixteen (16) years:

- for more than six hours in any day;
- for more than three hours on any school day;
- on any day for a period which, when added to the time required for attendance at school on that day, would require the person to spend more than a total of eight (8) hours attending school and working;
- between the hour of 10 p.m. of any day and the hour of 6 a.m. of the following day;

unless a **permit** has been issued by the Director under the *Employment Standards Act* allowing otherwise.

No employer shall employ a person who is under fourteen (14) years of age:

- in any industrial undertaking;
- in the forestry industry;
- in the construction industry;
- in a garage or automotive service station;
- in a hotel or restaurant;
- in a theatre, dance hall or shooting gallery;
- as an elevator operator;

unless a **permit** has been issued by the Director under the *Employment Standards Act*. Applications for such permits may be obtained from any office of the New Brunswick Department of Training and Employment Development or on-line.

#### INFORMATION:

Fredericton: (506) 453-3902

Toll Free - 1-888-4 (Labour) - 1-888-452-2687

Internet Address:

<http://www.gnb.ca/0308/0001e.htm>

### **10.3 Reporting a case of Child Abuse**

There may be cases where the Employment Standards Branch has to investigate on a presumed case of child employment abuse. The situation could in some cases be related to child abuse in the family. If the findings of the investigation lead to evidence of child abuse, reporting and referring to the Department of Family and Community Services are mandatory.

#### **10.3.1 Non-professional conduct by school personnel**

The *Education Act* requires every professional who is not a member of the school personnel to immediately report to the Minister of Education the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct defined as, "conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil or any other person under the age of 19 years".

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

Guidelines concerning reporting requirements under the *Education Act* will be attached to the Department of Education's Policy 701 on its policy website.

## 10.4 Roles and Responsibilities

### 10.4.1 The Director of Employment Standards has the obligation to

- refuse a work permit that is or is likely to be unwholesome or harmful to a child.
- order an investigation if he/she suspects that the *Employment Standards Act* is not being respected in regards to children.
- report all suspicion of abuse to the proper authorities, in compliance with the *Family Services Act*.

### 10.4.2 The Employment Standards Officer

- investigates employment that may be unwholesome or harmful to a child's health, welfare, moral or physical development.
- investigates issues relating to Child Work Permits.
- if he/she finds a situation where the child is abused in any way, he/she must report these findings to the Director of the Employment Standards Branch. In addition, the officer ensures the proper authorities are notified, such as social services, police, etc.
- has the obligation to report all suspicion of abuse to the proper authorities in compliance with the *Family Services Act*.

The Employment Standards Branch provides a telephone line through which additional information can be given on the employment of children. The reporting of any suspected case of child abuse with respect to employment can also be made.

## 10.5 The Complaint Process and the Labour and Employment Board

Any person who believes an employer may be in violation of the *Employment Standards Act* is encouraged to contact our office for assistance. The person can file an Employment Standards complaint in one of several ways:

- contact us by phone toll-free at 1-888-4LABOUR or 1-888-452-2687;
- complete an **on-line complaint form**;
- visit the **Employment Standards Branch nearest you** and speak with an officer;
- write to us at Department of Training and Employment Development, Employment Standards Branch, P.O. Box 6000, Fredericton NB E3B 5H1.

The *Employment Standards Act* can be accessed on the Internet at:

<http://www.gnb.ca/acts/acts/e-07-2.htm>

The Employment Standards Website can also be accessed on the Internet at:

<http://www.gnb.ca/0308/0001e.htm>

## 10.6 Human Rights Commission

### 10.6.1 Preamble

The *Convention on the Rights of the Child* is an international treaty that recognizes the human rights of children, defined as persons up to the age of 18 years. It establishes in international law that states "Parties must ensure that all children - without discrimination in any form - benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about, and participate in, the achievement of their rights in an accessible and active manner."

The *Convention on the Rights of the Child* was adopted on November 20, 1989 and is the first legally binding international instrument to incorporate the full range of human rights - civil

and political rights as well as economic, social and cultural rights. Two Optional Protocols, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, were adopted to strengthen the provisions of the *Convention* in these areas. Canada ratified the *Convention on the Rights of the Child* on December 13, 1991 since Canada is legally bound to put these provisions into practice, so too is New Brunswick.

This means that Canada, together with other countries who have ratified the Convention, agrees to review its law, policy and practice with children's best interests foremost. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the *Convention* and the resources required to meet them are provided. This may involve changing existing law, policy and practice, or creating new ones. Many of the rights in the Convention are reflected in Canadian law.

### 10.6.2 The New Brunswick Human Rights Act

In its Preamble, the *Human Rights Act* states that "... recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex, social condition and political belief or activity, is a governing principle sanctioned by the laws of New Brunswick".

The Human Rights Commission provides information to the public with respect to international human rights conventions and contributes to the Province's responses under reporting obligations to international authorities responsible for the implementation of rights, such as those guaranteed under the *Convention on the Rights of the Child*.

The *Human Rights Act* is a provincial law that prohibits discrimination in employment, occupancy of commercial and residential premises, sale of property, services provided to the public (including education), signs, and membership in certain associations. The *Act* applies to the provincial and municipal governments and to the private sector. Discrimination is prohibited on the

following grounds: age, race, colour, national origin, place of origin, ancestry, religion, physical and mental disability, sex (including pregnancy), sexual orientation, marital status, social condition and political belief or activity. Under the *Act*, harassment, and in particular, sexual harassment, is a form of discrimination and therefore, illegal. The same protection against discrimination is provided to children as to adults.

The *Act* does not apply to cases of discrimination or unequal treatment, which may arise in close personal relationships. The sectors of activity enumerated above do not include the *Act's* application to relations between individuals in a private family setting. Therefore, the *Act* has no application in many situations where child abuse arises. The equality provisions of the *Canadian Charter of Rights and Freedoms*, which guarantee all Canadians, equal protection and benefit of the law may be more likely to provide a remedy in this context. However, the *Act* does apply in situations where discrimination takes place in the provision of school services and public services.

Child abuse in the form of discrimination may also occur in the employment of a child. Employees under the age of 19 years may often be the subjects of harassment or disciplinary action. A child may be required to work certain shifts or to perform all menial work not required of other employees. In sporting activities, children may be abused and harassed by their coach or others. Children may also be denied membership in certain organizations because of their race, colour, age, physical or mental disability, sex, etc. There may be policies and procedures in place to address these types of abuse and discrimination. However, this does not prevent a parent from making a complaint of discrimination on behalf of their child.

The *Human Rights Act* places great importance on the conciliation and amicable settlement of complaints and upon the attendant rule of privileged communications that encourages parties to engage in frank and open discussion and to protect the privacy of information it gathers. While the Commission has scrupulous regard for the confidentiality of the complaint process, guidelines are in place to permit the sharing of

information material to a criminal investigation. The Commission may disclose information only to defense counsel and to the Crown in criminal proceedings where the written request complies with the Commission's internal guidelines.

Persons who believe they have been discriminated against according to the provisions of the *Human Rights Act* may file a complaint. The Human Rights Commission is responsible for investigating and conciliating such complaints. If a substantiated complaint cannot be settled amicably, it may be referred to a board of inquiry, which is an ad hoc quasi-judicial tribunal. The tribunal, after hearing the evidence, may dismiss the complaint or issue an order to remedy it. Such an order may include, for example, monetary compensation, declaratory relief ordering the abuse to cease, ordering offender rehabilitation or providing measures for the adoption of policies and practices aimed at eradicating such behaviours. Most often complaints are settled and the terms of settlement and the entire complaint process remain confidential. The process is free of charge.

Formerly, the *Human Rights Act* contained a definition of "age" which excluded those who were less than 19 years old, with the result that they were not protected from age discrimination. This definition was repealed on May 20, 1992. The *Act* provides however that discrimination on the basis of age, for persons under the age of majority, may be permitted if the discriminatory standard or policy is required or authorized by an Act of the Legislature or a regulation there under.

### **10.6.3 Roles and Responsibilities**

The *Family Services Act* requires everyone to report to the Department of Family and Community Services any information that causes them to suspect that a child has been abused. Mere suspicion of child abuse creates a statutory obligation to report. Failure to report a suspicion of child abuse to the Department of Family and Community Services may constitute an offence under the *Family Services Act*. In response to this mandatory requirement, the Human Rights Commission sets the following guidelines to be followed:

#### **10.6.3.1 The Director of the Human Rights Commission**

- Shall ensure that all individuals are responded to promptly.
- Shall ensure that all individuals receive courteous, impartial and quality service in the official language of their choice.
- Shall ensure that where there is a suspicion of child abuse, all cases are reported to the proper authorities, including the Department of Family and Community Services, police, etc.

#### **10.6.3.2 Human Rights Officers:**

- Shall familiarize themselves with the province's Child Abuse Protocols and of services available to children in these situations.
- Shall report any suspicions or findings of child abuse to the Director of the Human Rights Commission and to the Department of Family and Community Services.
- Shall report to the Director of the Human Rights Commission any complaints that contain allegations of child abuse.

The Commission will participate with other government and community organizations to work towards a collaborative response to child abuse.

#### **10.6.3.3 The Commission will:**

- Provide information and clarification on discrimination and harassment upon request;
- Post links on the Commission's intranet site referring to the Child Abuse Protocols;
- Display information provided by Government on child abuse.



### **10.7. Filing a Complaint of Discrimination:**

A child, or their guardian on their behalf, who claims to have been discriminated against, may contact the Commission for advice or to file a complaint by telephone, e-mail, or fax. TDD (telecommunication device for the deaf) services are also available. A twenty-four hour telephone line is available with next day response on calls received after 4:30 p.m. Individuals may also drop in at the Commission's head office in Fredericton or at its regional offices in Saint John (506-658-2414), Moncton (506-856-2422) and Campbellton (506-789-2574).

The Commission may be contacted at its head office in Fredericton, as follows:

Telephone: 506-453-2301

TDD: 506-453-2911

Fax: 506-453-2653

Toll-free in N.B.: 1-888-471-2233

The *Human Rights Act* is available at:  
<http://www.gnb.ca/0062/acts/acts-e.asp>

The Human Rights Commission Web site:  
<http://www.gnb.ca/hrc-cdp/e/>

Individuals will be provided information about the various options that are available. It is not necessary to provide a name to receive advice. It is illegal to retaliate against a person for filing a complaint. The incident in question must have occurred within the previous year, unless the Commission grants a time extension.

# 11.0 Protocols for Interviewing Victims of Child Abuse by Videotape

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## 11.1 Background

### 11.1.1 Why Do We Need Protocols for Videotaping Interviews with Children?

Statistics accepted in the 1984 report of the Parliamentary Committee on Sexual Offences Against Children and Youth indicate that 50% of all the women and 33% of all the men in Canada have, at one point in their lives, been victims of unwanted sexual interference. In 80% of these cases, the interference or abuse took place when they were children. 85% of the offenders fall into a category of trust or authority. Behind these statistics is a social issue of immense importance.

The criminal justice system responded to this social issue by proclaiming significant amendments to the *Criminal Code of Canada* in January 1988. By virtue of these amendments, complainants under the age of 18 who have allegedly been victims of sexual abuse can now testify in a court of law by the use of closed-circuit television from a room adjacent to the courtroom, behind a screen in the courtroom or by means of a videotape if the complainant adopts the contents of the videotape while testifying. These alternative means of giving evidence are not automatically available to witnesses but are subject to certain conditions being satisfied and by a ruling of the court. These means are considered only after it is apparent that a witness will not be able to testify by the traditional and preferred method which is under oath in the courtroom before the trier of fact without using any protective devices.

When these *Criminal Code* amendments were pending, it was evident that, in cases where videotaped evidence would be recorded, pre-court and interagency cooperation would be important. Therefore, an interdepartmental committee was constituted in 1988 and, as a result of their consultations, a first version of this document was distributed in November 1989. It was revised in January 1997.

These protocols apply only to videotaped interviews. If a young witness testifies by closed-circuit television or behind a screen, the procedure still involves contemporaneous direct evidence being taken before the trier of fact under oath. A videotape, on the other hand, if admitted in evidence, becomes a substitute for the direct examination of the child or young person. It is evidence that was recorded at a previous time, out of the courtroom, not under oath and not subject to cross-examination at the time the statements were made. Thus, the procedures and methods used in conducting the videotaped interview will be carefully scrutinized by counsel and by the court before the tape will be admitted in evidence.

The objective of this document is to provide some assistance to persons with an interest, particularly police and child protection workers, by answering some procedural questions as to the “Who, What, Where and When” issues associated with the taking of a videotaped statement. At the same time, the document includes a section on the interview itself thus helping to answer a “How” question as well. If proper interview techniques are used by the employment of non-suggestive methods, particularly the avoidance of leading or suggestive questions, videotapes will be useful to courts of law and to other professionals in other situations, because the victim’s version of events will more likely be seen to be independent and credible.

## **11.2 Use of videotapes**

### **11.2.1 Who Might Use a Videotaped Interview?**

A videotaped interview may be utilized in numerous ways:

1. By investigating police officers
  - (a) To review a child’s statement for information as an aid to investigation without the need for repetitive interviews of the victim;
  - (b) As a learning aid to improve upon their interviewing techniques and skills, but only where the proper consents have been given (See consent form attached to protocols as Appendix A); and
  - (c) To show to an accused in an effort to obtain an admission and/or confession or a guilty plea.
2. By social workers in Family and Community Services Units
  - (a) To assess protection issues and therapeutic needs;
  - (b) To show to non-offending parents to increase support for the child victim; and
  - (c) As a learning aid to improve upon their interviewing techniques and skills, but only where the proper consents have been given. (See consent form attached to these videotape protocols as Appendix A.)
3. By therapists
  - (a) To show to non-supportive parents to gain support for the child victim;
  - (b) To review for therapy and treatment of the child victim; and
  - (c) To review for therapy and treatment of the offender, but only where the proper consents have been given. (See consent form attached to these videotape protocols as Appendix A.)
4. By Crown counsel
  - (a) In criminal court cases; and
  - (b) In civil court (child protection) cases.
5. By an accused person or respondent parents.
  - (a) To prepare a full answer and defense to allegations in a criminal trial or a child protection case.

### **11.2.2 How Might a Videotaped Interview be Used?**

1. In criminal court cases
  - (a) To assist Crown counsel in deciding whether and what charges should be laid;
  - (b) To assist in preparing child witnesses for court;
  - (c) To enable Crown counsel to effectively provide disclosure for their case to defense counsel;

- (d) To show to the Court at the sentencing hearing to illustrate the victim impact of the sexual abuse;
  - (e) To assist defense counsel in their case preparation by providing the best possible disclosure of the evidence against the accused; and
  - (f) To assist in obtaining a guilty plea.
2. In civil court (child protection) cases
- (a) To show to Crown counsel prior to bringing an application to the Family Division of the Court of Queen's Bench;
  - (b) To show in court;
  - (c) To aid Crown counsel in the preparation of a case; and
  - (d) To show to defense counsel in the interests of disclosure and the possibility of consent being given to the order sought in court.

### **11.3 Criteria for videotaping**

#### **11.3.1 What Children Should Be Videotaped?**

The major criteria for videotaping interviews are:

1. A child who is allegedly a victim of child sexual abuse;
2. (a) A person who was under 14 years of age or, in the case of sexual exploitation, under 18 years of age at the time of the incident, in proceedings under the *Criminal Code*; or
  - (b) A child who is under the age of 16 or who is a disabled child under the age of 19 in proceedings under the *Family Services Act* of New Brunswick; and
3. A child who is able to communicate verbally or demonstratively, such as by sign language, or through an interpreter.

#### **11.3.2 Where Will Children Be Videotaped?**

##### ***i) The Interview Room***

1. The interview should take place at the facilities of Family and Community Services in each region. (See Appendix B of these videotape protocols for existing locations.)

2. The interview should be conducted in a comfortable room with as few distractions as possible.
3. The room should contain comfortable seating and a small table where the child can draw but no other distractions such as toys.
4. Investigative aids such as anatomically correct dolls, drawing materials or puppets should be accessible to the interviewer but out of sight of the child.
5. Video camera and microphone equipment in the interview room should not be accessible to the child, but be placed in such a manner as to ensure accurate video and audio recording.
6. The room should be well lighted and of suitable size so as to enhance video production.
7. Where a time/date generator is not available as part of the video equipment, a large clock with a second hand should be placed on the wall of the room in such a position that it will be clearly visible on the videotape. (See Interview, Section 11.5)

##### ***ii) Observation Room***

1. Where an observation room is available, the room should contain a window with a one-way mirror or be a separate room with a monitor which reproduces the live interview.
2. Any video or monitoring equipment in the observation room will be operated by a police officer or social worker who is informed about the use of the equipment.
3. For reasons relating to future arguments on the admissibility of the videotape (in a voir dire hearing), persons present in the observation room should be limited to observers with a need-to-know, who may be required to testify in court.

#### **11.3.3 When Should the Interview be Videotaped?**

The videotaping of the first interview should be done within a reasonable time after the offence is alleged to have been committed but, in any case, as soon as possible after the abuse has been reported.

1. (a) Where possible, all initial interviews of sexual abuse victims should be videotaped. Where this is not possible, then:
  - (b) A videotaped interview should be made with the child at the first opportunity.
2. If required, a medical examination should be scheduled as soon as possible after disclosure of abuse regardless of whether the examination is before or after the videotaped interview.
3. Some children may not make a full disclosure during the initial interview. All subsequent interviews with the child should be videotaped.

### **11.4 Interviewer qualifications**

#### **11.4.1 How Should the Interviewer Be Selected?**

It is important that the qualified interviewer possess many different skills:

1. The interviewer should have experience in working with and interviewing sexually abused children.
2. The interviewer should have education or training in the dynamics of child sexual abuse including an understanding of the profiles of the offender, the non-offending parent and the victim.
3. The interviewer should be prepared to testify in court as to his or her qualifications and the procedures he or she chose to use in the videotaped interview.

### **11.5 Interview**

#### **11.5.1 What Needs to be Done Before the Videotaped Interview?**

1. Before the child is interviewed:
  - (a) The interviewer should be selected in accordance with the section on Interviewer Qualifications, Section 11.4.
  - (b) The videotaping facility must be reserved.
  - (c) The child will be transported to the interview facility with the transporter(s) avoiding reference to sexual abuse in conversation with the child.

- (d) The child will be informed that the interview will be videotaped.
- (e) The child will be shown the interview room and the observation room.
- (f) No person other than the selected interviewer will be present in the interview room. The only exception to this is in the case where the child specifically requests a supportive person to accompany him/her.
- (g) No person will interrupt the interview process. Arrangements will be made in advance for no interruptions from outside the room.
- (h) If a supportive person is present during the interview (only at the child's specific request), that person will be asked not to interrupt or comment during the interview.
- (i) A decision needs to be made whether or not to take a « KGB » statement from the child. A « KGB » statement can later be admitted in evidence if the victim becomes subsequently unavailable for trial, usually by later changing the evidence or by refusing to testify.

To be admissible, the interview must meet the legal tests of necessity and reliability. In the case of a child, it will be important, prior to obtaining disclosure, using age-appropriate language, to explore with the child the importance of telling the truth, the difference between truth and a falsehood, the nature of a promise and the moral consequences of lying. Only if the court is satisfied that there are circumstantial guarantees of trustworthiness, will the statement be admitted in evidence.

#### **11.5.2 What Are the General Considerations for the Interview?**

1. The general principle in interviewing is to always proceed from the most general, open aspects of the interview to the more specific. Be patient. Each step towards the more specific is made only when required.
2. Every opportunity must be made to allow the information to come from the child. The less prompting the better. The interviewer must demonstrate patience to allow the child every

chance to provide information about the events of concern.

3. Interviewing is a fact finding process. The interviewer should have a number of alternative hypotheses in mind and should never attempt to prove a particular interpretation since this restricts the opportunities for the child.

4. Interview aids (e.g., drawings, pictures, dolls, etc.) are employed only when every attempt at unassisted interviewing has not worked. Non-suggestive aids (e.g., drawings made by the child; doll houses) should be used first when aids are required. Suggestive aids (e.g., anatomically detailed dolls) should be employed only as a last resort (e.g., if child protection is a concern and other interview procedures have failed) and the interviewer should be aware of the consequences of employing such aids. Any suggestive interview procedures drastically reduce the likelihood of criminal justice consequences of child abuse.

5. The interviewer must be alert to developmental differences in language and cognition. Never assume that you know what a child means by the use of a particular word. Always ask if the meaning is not obvious. Similarly, make sure you are employing words and concepts which the child understands.

6. Keep in mind the needs of children, especially younger ones. Be aware of their attention span, nutritional requirements and body functions.

### **11.5.3 What Are the Step-by-Step Protocols for Interviewing Child Witnesses Once the Videotaped Interview Commences?**

The following procedures are in accordance with the Step Wise Interviewing Guidelines of Dr. John Guille.

#### **1. Introductory Phase**

- (a) The interviewer will identify himself/herself and establish the time, date and location of the interview.
- (b) The interviewer will identify who is present in the room. The interviewer will explain his/her job.
- (c) The interviewer will inform the child that the interview will be videotaped.

#### **2. Rapport Building Phase**

(a) The interviewer must take sufficient time to help the child to relax and to build rapport with the child. The form this takes will vary from child to child and it requires flexibility and an appreciation of the needs of children. There is no point in proceeding with the interview until rapport has been established.

(b) Throughout the rapport building phase, the interviewer can make an informal assessment of several aspects of the child's behaviour. Thus, the interviewer can observe the child's language abilities (which can aid the later questioning phases of the interview). The interviewer can note the body language of the child, eye contact and the affect the child displays.

(c) The child should be asked to recount at least two memory episodes (e.g., a trip, a class excursion, a birthday, etc.). These episodes should be entirely independent of the abuse allegations. The interviewer can note the style and content of each memory episode. This serves as a comparison for the style and detail the child provides in the later part of the interview.

#### **11.5.4 Introducing the Purpose of the Interview**

(a) The interviewer should discuss the importance of telling the truth and the need for the child to focus on his or her own experience.

(b) Introducing the topic of sexual abuse should follow the same step-wise approach which generally guides the interview. The topic is first introduced in the most general fashion (e.g., "Do you know why you are talking to me today?"). If this does not introduce the topic take the step to a slightly more specific question (e.g., "Has anything happened to you which you would like to tell me about?"). If this is unsuccessful, the next step might be "Has anything happened to you which you feel unhappy or uncomfortable about?". A subsequent step, if necessary, might be "Has anyone done something to you which they shouldn't?" A last report might be "Has anyone

touched you in a way they shouldn't?" Thus, the object is to avoid using suggestive or leading questions. The major facts in issue are whether the child has been sexually abused, in what manner and by whom. Any suggestive or leading questions on those issues can make a videotaped interview valueless in criminal court. Under no circumstances should you indicate the name of a suspect or the nature of the specific allegations. This type of information must come from the child. Generally, the more open questions will be sufficient to introduce the topic of abuse. Be sure that you always phrase the question in language which is appropriate to the child's developmental level.

(c) In those cases where a child has not yet disclosed abuse, it may be necessary for child protection reasons to be more probing when introducing the topic of sexual abuse. Only take such a step as a last resort and be aware that the use of leading questions is likely to compromise any criminal justice consequences of the interview.

#### 11.5.5 Free Narrative Phase

(a) This is the most important aspect of the interview. You must provide every opportunity for the child to provide his or her own version of the events.

(b) Ask the child to describe each event from the beginning. If the allegation is one of repeated abuse, first obtain an outline of the typical form of the abuse. Then use the script of the typical form of abuse as a means of assessing specific episodes. For example, ask if there was any occasion when the script was changed. Also, you might ask the child to recall the first episode and/or the last episode.

(c) Do not interrupt the child during the free narrative. If you think of questions, contradictions, inconsistencies, etc. make a note for later reference. Do not correct, interpret or challenge the child during the narrative phase.

(d) If the child stops the narrative, encourage continuation with the use of simple statements or questions. For example, "What happened next?" or restate the last thing the child said and say "And then what happened". This phase of the interview should proceed at the child's pace. Be patient, tolerate pauses and keep a relaxed tone in the interview.

(e) Allow the child to elaborate and express whatever he or she wishes, even if you obtain irrelevant or verbose descriptions.

(f) Once the child has exhausted his or her capacity for a free narrative, ask the child to repeat some part of the narrative. Make sure that you communicate to the child that the purpose of this repetition is to assist you in understanding what happened. Do not lead the child to think you are doubting the story.

#### 11.5.6 The Open Questioning Phase

(a) The purpose of this phase is to provide an opportunity for the child to elaborate details of the events described during the free narrative phase. In ideal circumstances, the free narrative would have exhausted the child's memory. However, some questioning is usually going to be necessary after the narrative and the younger the child, the more likely this is true.

(b) The questions in this phase should take the form of requests for more details about events previously disclosed (e.g., "Can you tell me any more about the time it happened in the park?"). If multiple incidents have been described in the narrative, it is useful to give each incident a distinctive label (e.g., the park incident, the T.V. time, etc.). The child may aid in the labelling of the incidents. This labelling will help to keep the incidents distinct and clarify which incident is being discussed at a particular time.

(c) The questions employed should never lead the child nor should they suggest an answer. Make sure that your questions do not pressure the child to provide an answer. Always make it clear that the child can say "I don't know that".

- d) If you need to repeat something the child said earlier (e.g., the description of an event), ask the child to correct you if you make any mistakes.

### 11.5.7 Specific Question Phase

(a) The purpose of this phase is to provide an opportunity to clarify and extend previous answers. Certain devices can be employed here to assist the child who is having recall difficulty. For example, you might ask the child to describe how a television camera on the ceiling would have seen the event (i.e., taking a different perspective). Alternatively, the child might be asked to remember what he or she was doing before the event, what the weather was like, etc.

(b) Some questions in this phase may require the inclusion of alternatives in the question. Always try to include more than two alternatives (e.g., "Did this happen in the autumn, winter, spring or summer?" - alternative words would be used for younger children).

(c) Never include information you have obtained from any other source in your questions. The one exception is using something as a memory trigger. For example, if you know that a mirror was used during the abuse and the child has not mentioned it, you might ask, "Do you remember anything about a mirror?". Note that this form of question provides no information to the child. Do not tell the child that you know that he or she told someone else.

(d) With younger children or children with language problems, it may be necessary to use some aids during the interview. Such aids should only be used when the other phases of the interview have proved inadequate. The aids should not be suggestive. Thus, if drawings are used, they should not contain sexual features, these can be added by the child as part of the interview process. If dolls are used, they should not be anatomically detailed. Anatomically detailed dolls should only be used after the child has verbally disclosed the

details of the sexual abuse and then only for illustrative purposes.

(e) If there are inconsistencies in the child's statement, they should be addressed last. The probing of inconsistencies should be as gentle as possible (e.g., "You said he put his finger inside, but you said you had your clothes on. Can you tell me how that happened?").

### 11.5.8 Leading Questions and Suggestion

(a) Under unusual circumstances, a child protection worker may have to probe a child who has been unwilling to disclose. Using leading questions to probe is a last resort. Taking this step makes the likelihood of criminal proceedings based on videotaped evidence virtually zero. This step should be taken only when every other phase of the interview has failed to produce sufficient information and there is still good reason to be suspicious of abuse.

(b) The question of how suggestible the child is may be an issue. If this is the case, it may be necessary to check suggestibility at the end of the interview. This can be done by asking a couple of leading questions about irrelevant issues (e.g., "You wore a red dress yesterday, didn't you?"). If the child demonstrates a susceptibility to suggestion, it may be necessary to pursue this issue to determine previous contamination of the child's evidence.

(See Appendix D of these videotape protocols for Examples of Non-Leading Questions)

### 11.5.9 Concluding the Interview

(a) Regardless of the outcome of the interview, the child should be thanked for participating.

(b) Do not make promises about future developments which you cannot keep.

(c) Ask the child if he or she has any questions and answer those which you can.

(d) Once the interview is concluded, the interviewer may wish to consider completing a Statement Validity Checklist



## **11.6 Continuity, access and disposition of videotapes**

### **11.6.1 What Should be Done with the Videotape When the Interview is Completed?**

1. Continuity of the original tape must be maintained by the investigating police officer.

Continuity refers to a means of proving the possession of the videotape by an unbroken sequence which will satisfy the court that there was no opportunity for the exhibit to be tampered with.

2. As a first step in the chain of continuity, the camera operator will open the new cassette package, label the cassette with the date, the time of commencement of the interview and a file number, if appropriate. The camera operator will then insert the cassette in the camera. When the interview is completed, the camera operator will remove the cassette and complete the label with the time of conclusion of the interview and the initials of the camera operator. The camera operator will then remove the security tab on the cassette.

3. If the camera operator is not the investigating officer, the camera operator will keep continuous physical possession of the tape until delivered to the investigating officer.

4. The original tape will be kept in an exhibit locker until used for court purposes except for removal to make one working copy.

5. If required, a working copy will be made by the investigating officer.

6. The copy and the original are the responsibility of the police.

### **11.6.2 Who Has Access to the Videotape?**

1. A copy of the original videotape will be released to the Crown and on request to the Minister of Family and Community Services.

2. Ordinarily, because of disclosure requirements, in order to facilitate the defense's right to full answer and defense, Crown counsel would, on receiving a request, as soon as reasonably practicable, give to the defence a copy of any

videotaped recording of a statement made by a person whom the Crown proposes to call as a witness.

3. However, an exception exists on disclosure of a videotaped statement of a sexual abuse victim. The rationale for this exception is based on the public interest in avoiding any embarrassment or potential embarrassment to a victim by the unauthorized display or viewing of the videotaped statement, including details of the alleged sexual activity, by audiences or persons who have no direct interest or involvement in the criminal proceedings.

4. If the investigating agency has provided an extra videotape copy to the Crown for disclosure purposes, a copy of the victim's videotaped statement will be provided to defence counsel upon completion of the "Undertaking and Acknowledgement" form. (See Appendix C of these videotape protocols.) If the investigating agency has not provided an extra videotape copy, Crown counsel may, in his or her discretion, lend the Crown copy to defence counsel, on completion of the same "Undertaking and Acknowledgement" form referred to above. In the event that counsel for the defence is unwilling to accept a copy of the videotape on the stated terms and conditions, the matter will be determined by the trial judge on an application for directions by the Crown prosecutor.

5. No copy of a videotaped statement of a sexual abuse victim will be released to an unrepresented accused and no "Undertaking and Acknowledgement" form will be sought or obtained. Instead, the matter of disclosure will be determined by the trial judge on an application for directions by the Crown prosecutor. At the hearing on the issue of disclosure, if the videotape is ordered to be released, the Crown prosecutor will seek strict conditions in relation to the viewing and retention of the copy provided to the accused.

6. These caveats apply only to the provision of a copy of the victim's videotaped statement to defense counsel or an unrepresented accused without a court order. The prosecutor will, at all times, otherwise facilitate the viewing of a copy of the videotape by defense counsel and/or the

accused at a suitable facility such as a police station.

### **11.6.3 What Happens to the Videotape When Court Proceedings are Completed?**

1. If the videotape is entered in evidence, the tape remains with the court as an exhibit until all appeal periods have expired.
2. After the appeal periods have expired, an application should be made to the presiding judge or justice for return of the exhibit to the investigating officer if no criminal or child protection proceedings result, then the original videotape ceases to be an exhibit but should be retained on file by the police agency.
3. If no criminal or child protection proceedings result, then the original videotape ceases to be an exhibit but should be retained on file by the police agency.
4. In any event, the working copy will always be erased.
5. To erase the tape, one must use a bulk eraser which can be purchased from a store specializing in video/audio equipment.
6. Because of the need for disclosure to the defense, no videotape will be destroyed until all legal proceedings, if any, are completed.
7. Original videotapes will be stored or destroyed according to the policy of the agency or department in possession of the original.

**11. 7 Appendix A**

**Consent to use videotaped interview**

Whereas a Request has been received from \_\_\_\_\_ (Name and Occupation) to use (a) videotaped interview(s) of \_\_\_\_\_ (Name of person interviewed) made at \_\_\_\_\_ (location of the interview) on \_\_\_\_\_ (Date of Interview);

The undersigned does/do hereby give consent to the use of the videotaped interview(s) by \_\_\_\_\_ (Name and Occupation of user)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

**Sign either A, B, or C below**

**A.** Where the person who was interviewed is **Under 12 Years Old** at the time of the Request for use of the Videotaped Interview:

Signature of parent(s)/guardian(s)  
\_\_\_\_\_

Date  
\_\_\_\_\_

Witness(es)  
\_\_\_\_\_

**B.** Where the person who was interviewed is **between 12 to 17 years old** at the time of the Request for use of the videotaped interview:

Signature of person interviewed  
\_\_\_\_\_

Date  
\_\_\_\_\_

Witness  
\_\_\_\_\_

Signature of parent(s)/guardian(s)  
\_\_\_\_\_

Date  
\_\_\_\_\_

Witness(es)  
\_\_\_\_\_

**C.** Where the person who was interviewed is **18 years of age or older** at the time of the Request for use of the videotaped interview:

Signature of person interviewed  
\_\_\_\_\_

Date  
\_\_\_\_\_

Witness  
\_\_\_\_\_

## **11.8 Appendix B**

### **List of provincial locations for videotaping**

#### ***Department of Family and Community Services***

P.O. Box 5001  
121, rue de l'Église  
Edmundston (NB)  
E3V 3L3  
Tel. (506) 735-2010  
Fax. (506) 735-2514

P.O. Box 5001  
166 Broadway Street  
Grand Falls (NB)  
E0J 1M0  
Tel. (506) 473-7757  
Fax. (506) 475-2451

P.O. Box 5001  
165 St. Andrew Street  
Bathurst (NB)  
E2A 2Z9  
Tel. (506) 547-2020  
Fax. (506) 547-2744

P.O. Box 7000  
360 Pleasant Street  
Miramichi (NB)  
E1V 3N3  
Tel. (506) 627-4044  
Fax. (506) 622-8802

P.O. Box 5001  
157 Water Street  
Campbellton (NB)  
E3N 3H5  
Tel. (506) 789-2422  
Fax. (506) 759-9504

1175 Main Street  
Lower Néguaac (NB)  
E0C 1M0  
Tel. (506) 776-3833  
Fax. (506) 776-3849

P.O.Box 5590  
295 St-Pierre West Blvd  
Caraquet (NB)  
E1W 1B7  
Tel. (506) 726-2000  
Fax. (506) 726-2040

Assumption Place  
12th Floor, 770 Main St.  
Moncton (NB)  
E1C 8R3  
Tel. (506) 856-2400  
Fax. (506) 856-2632

Provincial Building  
41 King Street  
St. Stephen (NB)  
E3L 2C1  
Tel. (506) 466-7388  
Fax. (506) 466-7579

P.O. Box 5001  
Place Cartier  
Richibucto (NB)  
E0A 2M0  
Tel. (506) 523-7606  
Fax. (506) 523-7663

P.O. Box 5001  
300 St. Mary's Street  
Fredericton (NB)  
E3B 5G4  
Tel. (506) 453-3953  
Fax. (506) 444-5178

55 Union Street  
Mercantile Centre  
Saint John (NB)  
E2L 5B7  
Tel. (506) 658-2734  
Fax. (506) 658-3071

P.O. Box 5001  
200 King Street  
Woodstock (NB)  
E0J 2B0  
Tel. (506) 325-4412  
Fax. (506) 325-4517

P.O. Box 5001  
30 Moffatt Avenue  
Sussex (NB)  
E0E 1P0  
Tel. (506) 432-2004  
Fax. (506) 432-2053

**11.9 Appendix C**

In the Matter of Her Majesty the Queen v.

Re: Offense Section(s):

**UNDERTAKING AND ACKNOWLEDGEMENT  
VIDEOTAPED STATEMENT OF ALLEGED SEXUAL  
ABUSE VICTIM**

I, \_\_\_\_\_

*counsel for* \_\_\_\_\_

*hereby acknowledge that I have been afforded disclosure of the videotaped statement of the alleged victim in this case by receiving a copy of said statement from the Crown Prosecutor's Office.*

*In accepting this videotape copy, I hereby undertake to comply with the following conditions:*

1. This videotape will be retained by me and the contents will be revealed only to my client or to any person acting under my direction in preparation of the case for the defense (i.e. a potential expert witness);
2. This videotape will not be disclosed to anyone, except in accordance with paragraph 1 above, without the express and explicit consent of the Crown Prosecutor's Office;
3. Additional copies of this videotape will not be made by any person without the express and explicit consent of the Crown Prosecutor's Office; and
4. This videotape will be returned by me to the Crown Prosecutor's Office upon the termination of the solicitor-client relationship as it pertains to this proceeding and/or any withdrawal by me as counsel prior to the ultimate conclusion of the case against my client.

DATED at \_\_\_\_\_,

New Brunswick this \_\_\_\_\_ day of \_\_\_\_\_

A.D., 200 .

## 11.10 Appendix D

### Examples of non-leading interview techniques

#### 1. *Must not contain answer*

##### Leading

Did it happen at your house?

Was your mom there?

Did he tell you not to tell anyone?

##### Non-Leading

Where did it happen?

Who was there?

What was said to you?

#### 2. *Must not contain a choice of answers*

##### Leading

Was he wearing pants or shorts?

Were you sitting up or laying down?

Were you scared, angry or sad?

##### Non-Leading

Tell me what he looked like.

Where were you in the room?

How did you feel?

#### 3. *Must not name the suspected offender before the child has identified the person*

##### Leading

Was it your dad who touched you?

Did your babysitter tell you to keep a secret?

We have been told you are having a problem with your uncle.

##### Non-Leading

Who touched you?

Has anyone asked you to keep this a secret?

Do you know why you are here?

#### 4. *Must not contain explicit details of the alleged offence*

##### Leading

Did he make you rub his penis up and down?

Did white stuff come out of his penis?

Which finger did he use to hurt you?

##### Non-Leading

What did he do next?

Then what happened?

What was it that hurt you?

#### 5. *Must not contain the interviewer's assumptions*

##### Leading

We are going to ask you some questions about what happened to you. What kind of car did you go in?

Where was the bed in the room?

Tell me about your mom's house.

##### Non-Leading

Do you know why you are here?

How did you get there?

Can you tell me what was in the room?

Tell me about where your mom lives.

*Author: Nancy Fredericks May 1992*



## 12.0 Child Abduction Protocols

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### 12.1 Department of Family and Community Services

#### 12.1.1 Introduction

The following protocols have been developed to assist professionals faced with child abduction situations. Careful adherence to these protocols, based on a multidisciplinary approach, will assist in the identification of abducted children so that they may receive appropriate services and support while their abductors receive due process in civil and/or criminal court settings.

These protocols emphasize the multidisciplinary team approach and focus on the roles and responsibilities of its key members. The coordination of social and legal interventions is important to minimize unnecessary interference with or disruption of the abducted child and to create a safe environment in which the child can

await the outcome of civil and/or criminal court proceedings relating to the abduction.

Child abduction cases are frequently difficult, involving complex evidentiary, procedural or constitutional issues and serious emotional and financial ramifications for the family members involved. These cases require the skill and coordination of many professionals to ease the stress for all concerned.

### INTERVENTION GUIDELINES FOR CHILD PROTECTION SOCIAL WORKERS IN THE DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

Three types of abduction are described in the *Criminal Code of Canada*:

#### 1. Contravention of Custody Order

Section 282(1) CCC - Parent, etc.

- *This offence occurs when a child under the age of 14 years is abducted in contravention of a custody order.*
- *A parent, guardian, or person lawfully in charge of a child under 14 who takes, entices away, conceals, detains, receives or harbours that child in violation of a custody order of a Canadian court.*
- *The offender is acting with the intention of depriving another parent, guardian or person in charge of the child under the court order of the possession of the child.*
- *The offence may be prosecuted by indictment or summarily, and is punishable on indictment by imprisonment not exceeding 10 years.*

#### 2. Abduction (No Custody Order)

Section 283(1) CCC

- *The offence occurs when a child under the age of 14 years of age is abducted, and no order of a Canadian court exists in respect of the custody of the child. However, charges may be laid where an order of custody has been granted by a court in a foreign country.*



- A parent, guardian or person having the lawful right to custody of the child, takes the child from or out of the control of another parent, guardian or person having a similar right to custody of the child with the intent to deprive that parent, guardian or person having possession of the child.
- A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking or detention of the child, by the other person.
- The offence may be prosecuted by indictment or summarily, but **only with the consent of an Attorney General.**

### 3. Stranger Abduction - Section 281 CCC - Abduction of Child Under Fourteen

- A “stranger abduction” occurs when the abduction of a child under the age of 14 years is committed by a “stranger”, who is someone not recognized as a parent, guardian or other person lawfully in charge of the child under 14.
- The offence is committed by the “stranger” who takes, entices away, conceals, detains, receives or harbours such a person, with the intention of depriving a parent, guardian or person in charge of the child under 14.

NOTE: This protocol focuses on the two specific types of abduction: (1) Contravention of Custody Orders and (2) Abduction (no custody orders).

There are two means by which Family and Community Services may become involved in parental child abduction matters:

- By providing assistance to the police who are enforcing the *Criminal Code of Canada* provisions regarding abduction of a child.
- By investigating allegations reported to the Minister from either parent that the security and development of a child is in danger while in the care of the other parent.

#### 12.1.2 Investigation

- It is important that the Police and Family and Community Services jointly investigate situations of child abduction. Department of

Family and Community Service staff are not empowered to act under the abduction provisions of the *Criminal Code*. That is within the jurisdiction of the police.

- The Department of Family and Community Services receives its mandate to intervene in cases of parental child abduction by way of section 31(1)(j) of the *Family Services Act* that reads:

**The security and development of a child may be in danger when the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right.**

- It is very likely that the police will bring abduction cases to the attention of Family and Community Services. Even if the police officer obtains the valid copy of the court order, the officer should contact the Department of Family and Community Services to determine if additional information is available concerning the family and determine if there is a need for further involvement of the Department.
- Should it be determined there is a need for further involvement, the social worker and the police will conduct a joint investigation. It is important to remember these situations have the potential of being very volatile.
- If the non-custodial parent has abducted a child, the Department of Family and Community Services can intervene provided that the police have made a request for their assistance when the police are enforcing the *Criminal Code of Canada*. The police will provide a valid copy of the court order.
- When the Department is assisting police in enforcement of out-of-province orders, it is necessary for the police to confirm to the Department that out-of-province orders of custody and apprehension are validated or recognized in the Province of New Brunswick by a Justice of the Court of Queen’s Bench before execution of the order takes place. In these situations, the role of Family and Community Services will be to provide a safe setting for the child until the child can be

returned to the parent having the right to custody. This may require placing the child under Protective Care until the parent having right to custody can receive the child. The use of Protective Care is particularly necessary in situations when travel arrangements must be made to have the child returned to the parent having the right to custody. In situations when the child is returned immediately to the parent having right to custody, Protective Care need not be taken.

- When a parent from **within** New Brunswick, who has the right to custody reports to the Department of Family and Community Services that their child is with the other parent without that parent's consent and there is a concern about the safety and security of the child, a child protection investigation is to be carried out. This investigation will be in accordance to the Child Protection Services Practice Standards and Guidelines similar to other child protection referrals. Because of the potential dual role of criminal and child protection proceedings in situations of alleged abduction, it is recommended that any investigation be conducted jointly with the police. The fact that a non-custodial parent has taken custody of a child is not, in itself, evidence that the child's security and development is in danger. The child may be placed in Protective Care when there is other evidence that the security and development of the child is in danger, in addition to the fact that the child is in the care of someone other than the custodial parent, e.g. non custodial parent is taken into custody by the police, hence the child is abandoned; other concerns regarding neglect or abuse of the child exist when the child is in the care of the non-custodial parent.

**Note:** If there is a court order validated by a Justice of the Court of Queen's Bench in New Brunswick, directing that the child be apprehended and returned to the custodial parent, the Department of Family and Community Services will assist the police in enforcing the order.

- In situations when the parent having right to custody reports that the parent not having the

right to custody is refusing to return the child and there are no apparent child protection concerns, the parent having the right to custody should be advised to notify the police if they wish to pursue the allegation of abduction. The social worker should advise the police of the alleged abduction and the custodial parent's plan to request the assistance of the police. This serves to alert the police in the event of potential violent action by the parent, particularly if Family and Community Services cannot return the child to the custodial parent.

- In a situation where the non-custodial parent alleges that the custodial parent is abusing the child, the social worker will refer to and apply the departmental Child Protection Services Practice Standards and Guidelines and Protocols regarding investigation.
- When a parent who has custody of a child reports to Family and Community Services that the non custodial parent has removed the child to another province, the social worker will refer that parent to the police to pursue the allegation of abduction. If the custodial parent believes the security and development of the child is in danger while the child is with the non-custodial parent, a child protection referral is to be made to the Child Protection Services Practice Standards and Guidelines in the other jurisdiction. Should the whereabouts of the non-custodial parent and child be unknown, a Canada Wide Child Protection Alert shall be forwarded to the other provinces and territories when it is suspected the child is in danger.

### 12.1.3 Enforcement

- If there is a Court order validated by a Justice of the Court of Queen's Bench in New Brunswick, ordering the child be apprehended and returned to the custodial parent, Family and Community Services will assist the police in enforcing the order. When the Department of Family and Community Services is requested by a police officer to accompany him/her **while enforcing a custody order**, the department will accompany the officer to assist with the return of the child to the parent who has the

right to custody. This will include placing the child under protective care, if it is necessary to do so, (e.g. the custodial parent is from another jurisdiction and arrangements must be made for the parent to come for the child or arrangements are being made for the child's safe return to the custodial parent).

- If no legal document is produced to support child custody claims, the parents will be encouraged to use the court process in order to decide which parent should have custody of the child. However, if police and/or the social worker suspect that abuse and/or neglect is being inflicted by either parent, the situation is to be referred to the Department of Family and Community Services to determine the safe living arrangement for the child.

#### 12.1.4 Court Proceeding

- Should the security and development of the child be determined to be in danger, the Department of Family and Community Services will initiate court proceedings requesting that Custody and/or Supervision of the child (ren) be granted to the Minister.
- Police and Department of Family and Community Social Services are expected to appear as witnesses if they are asked to do so whether it is a criminal or civil proceeding.

#### 12.1.5 Repatriation

- For the purposes of this document, a child eligible for repatriation from New Brunswick would be a child up to the age of sixteen (16) years, whose safety or development is judged to be in danger or who is eligible for repatriation under the legislation of the receiving province or country, and who is a resident of another province or country. For repatriation within the provinces and territories of Canada, refer to the *Provincial/Territorial Protocol on Families Moving Between Provinces and Territories*.
- If the child needs to be removed from his/her present environment, the Department of Family and Community Services will be responsible to find suitable alternate accommodations. Should

this mean placement in a foster home, the Minister will take a protective care status. Although there is allowance of five working days before making a final disposition, the Department will make every possible effort to return the child to the custodial parent as quickly as possible.

- When a child has been abducted between countries, it may be necessary to involve a Central Authority such as the Attorney General. When a child has been abducted between provinces, the Crown counsel may become involved in enforcement of an out of province Custody Order.
- The role of the Department of Family and Community Services is to ensure that the security and development of the child will not be at risk while arrangements are being made to return the child. The local Royal Canadian Mounted Police detachment will coordinate travel arrangements through the Transportation of Abducted Children Initiative based on criteria to determine the need for transportation. However, if the custodial parent is unable to accompany the child back home, the Department of Family and Community Services will arrange for an attendant if the child is under 13 years old. If the child is older, the department will assess the need for an attendant based on the child's emotional state and level of maturity.
- In some circumstances, the Department of Family and Community Services may recommend further child welfare involvement after the child's return to the custodial parent. If so, a summary report will be provided to the child welfare services agency of the resident province or country.

#### 12.1.6 Court Mediation

- When child abduction occurs within the province by parents who are residents of the province and no custody order exists, the Department will investigate any complaints that the security and development of the child is in danger. Child Protection Services Practice Standards and Guidelines and Protocols will be

followed. If there are no child protection concerns, the Department of Family and Community Services will encourage parents to have the custody issue resolved through the court process.

## **12.2 Police Responsibility In Cases of Child Abduction**

### **12.2.1 Introduction**

**This protocol document will outline best practices/procedures to take in a situation involving a complaint of child abduction, which may have been committed by a stranger, or a parent, of a child under the age of 14 years. The focus of this protocol is on custody order and no custody order situations.**

Police must also be aware of their responsibility as clearly described in the Child Victims of Abuse and Neglect Protocols.

- The role of the Police in cases of suspected child abduction by a stranger or a parent, is to determine the existence of criminal activity.
- The role of Child Protection Services is to determine if the security or development of a child is in danger taking into consideration all of the factors listed in Section 31(1) of the *Family Services Act*.

The Police must be fully cognizant of their responsibility and authority under Section 12 of the Police Act, which states that police officers are responsible for:

“assisting in the taking of a child into the protective care of the Minister of Family and Community Services, as well as in the enforcement of warrants, custody orders, protective intervention orders, restraining orders and similar court orders issued in family proceedings, when the safety or security of a child or other person is at risk”.

**The protection of the child should be of primary concern to both the Police and Child Protection Services.**

Investigations of abduction of children are always difficult in several respects. The parent who has just lost his or her child(ren) will be very

concerned with their safety and well being. The uncertainty of not knowing when, if ever, the children will be returned makes the matter even more distressing.

### **12.2.2 Criminal procedures**

Note: The failure of a child to return from a “visit”, at the designated time, will not necessarily invoke criminal charges.

Essentially, there are three situations that could occur with regard to a child abduction, that may necessitate the response of police and lead to an investigation being conducted, and charges being laid.

#### **1. Abduction in Contravention of Custody Order - Section 282(1) CCC - Parent, etc.**

- This offence occurs when a child under the age of 14 years is abducted in contravention of a custody order, and,
- when, a **parent, guardian, or person in lawful care** of a child under 14 takes, entices away, conceals, detains, receives or harbours that child in **violation of a custody order of a Canadian court**.
- The offender is acting with the intention of depriving another parent, guardian or person in charge of the child under the court order of the possession of the child.
- The offence may be prosecuted by indictment or summarily, and is punishable on indictment by imprisonment not exceeding 10 years.

#### **2. Abduction (No Custody Order) - Section 283(1) CCC**

- The offence occurs when a child under the age of 14 years of age is abducted, and **no order of a Canadian court exists** in respect of the custody of the child. (Where an order of custody has been granted by a court in a foreign country, however, charges may be laid in Canada).
- The elements of this offence are similar to 282(1): when, a **parent, guardian, or person in lawful care** of a child under 14 entices away, conceals, detains, receives or harbours that child, or takes the child from or out of the

control of another parent, guardian or person having a similar right to custody of the child with the intent to deprive that parent, guardian or person having possession of the child.

- A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking or detention of the child, by the other person.
- The offence may be prosecuted by indictment or summarily, but **only with the consent of an Attorney General.**

It is recommended that investigators refer to Sections 284, 285, and 286 in No Custody Order situations, for a description of 'statutory defences'.

### 3. Stranger Abduction - Section 281 CCC - Abduction of Child Under Fourteen

- A "stranger abduction" occurs when the abduction of a child under the age of 14 years is committed by a "stranger", who is someone not recognized as a parent, guardian or other person lawfully in charge of the child under 14.
- The offence is committed by the "stranger" who takes, entices away, conceals, detains, receives or harbours such a person, with the intention of depriving a parent, guardian or person in charge of the child under 14.

Once it has been determined that the abduction is a 'stranger abduction', and that the **child may be in danger**, the level of urgency, and investigative techniques that would be utilized, may differ somewhat from the suggested actions contained in this protocol document, which has the focus on the specific issues of custody orders or no custody orders.

#### 12.2.3 Guidelines for Police in Responding

##### 1. Responding to a Complaint

When a complaint alleging parental child abduction is received, the following guidelines should be followed:

- The receiver of the complaint should **determine if there is or is not a custody order** between the parties.

- The receiver of the complaint should determine if possible, if the abduction may have resulted in the child being removed from the province of residence or the Country of residence.

##### 2. Investigation Process - Criminal Acts

- Since the protection of the child is of primary concern and since custody orders are normally issued by the Family Court, **joint investigations involving both the police and Child Protection Services should be conducted in all suspected cases of parental child abduction.**
- A joint investigation team must be established for the investigation of all intrafamilial incidents. In extrafamilial incidents, the police may have major responsibility for the investigation but will contact Child Protection Services for information and to ensure mandatory reporting conditions of the *Family Services Act* have been met. Refer to Sections 4.0 and 7.6.2 of the Child Victims of Abuse and Neglect Protocols for further detail on the Joint Investigation process.
- Police should ensure that Child Protection Services are available when an arrest of a suspect is imminent, to provide trauma counselling to the child, if necessary, and to determine whether protective care of the child is necessary and paramount.
- This is of particular importance, if, at any time during the investigation, information indicates a possible **child abuse situation**, in which case it becomes **mandatory** that the suspected child abuse is reported as per Section 30 of the *Family Services Act*. For cases involving suspected child abuse, see Child Victims of Abuse and Neglect Protocols.
- All reports of parental child abduction should be investigated promptly and thoroughly, with a high degree of priority, to ensure the child is not in danger.
- Should the initial information lead the investigator to believe that the abducting spouse may have left the country, contact should be made with the R.C.M. POLICE, Ottawa Headquarters, Attn: N.C.O. i/c Missing

Children's Registry, Identification Services Directorate.

Note: the CPIC ORI is ON11074, phone 613-318-3576, fax 613-993-5430. The web site is [www.ourmissingchildren.ca](http://www.ourmissingchildren.ca).

- If it is determined there is a current and valid custody order, the police should **obtain an initial copy**, faxed or otherwise, from the complainant or the complainant's lawyer, or from the Court, as soon as possible.
- Once it has been determined which charge under the *Criminal Code* is appropriate, then a charge should be laid and a warrant to arrest obtained for the suspect, unless an arrest without warrant is necessary and lawful.
- When an arrest warrant is obtained from the Court, the arrest warrant should be placed on CPIC, the Canadian Police Information Centre data base, as a Canada-wide warrant where it is believed the accused has left or is leaving, the Province. This will empower police in other provinces to arrest.
- In order to avoid potential conflict situations, it is recommended that participation or accompaniment of the custodial parent at the scene of arrest not be encouraged.
- When investigating child abduction complaints, school district officers may be of assistance when attempting to locate an abducted child.
- A Missing Persons Report should be completed and placed on CPIC, cross-referenced with the "want" or warrant for the accused, which will assist other police should they encounter the child or the wanted person.
- The police should contact Child Find Canada at 1-800-387-7962, web site [www.childfind.ca](http://www.childfind.ca), to make them aware of the abduction, and to request their assistance with the family, in advising of their services regarding posters, and net-working. Photographs of the child and abducting parent suitable for posters and faxing should be obtained. A further search site is [www.childcybersearch.org](http://www.childcybersearch.org).
- If the investigating officer(s) determines that the family needs financial assistance to return

a child to another province or country, the officer(s) can make a request for transportation assistance to the RCMP Missing Children's Registry, [www.ourmissingchildren.ca](http://www.ourmissingchildren.ca).

- It should be kept in mind that child abduction is not an extraditable offence, for the most part, in the U.S.A., and it will be unlikely that extradition proceedings can be commenced.
  - Accordingly, do not expect that any American police agency will arrest the abductor to hold for extradition. The more common remedy will be for U.S. Immigration to detain the suspect. This may provide an opportunity for the "legal" spouse to take back the child. Usually, the Immigration Office will call in Child Protection Services to take the child.
  - Where there is an abduction to the United States, it is recommended that the police contact the individual State Clearing House For Missing Children, which is usually run by the State Police.
3. Family Orders and Agreements Enforcement Assistance Act
- This Act establishes a method of obtaining information from federal data banks, which could assist in locating a person who has abducted a child or who failed to comply with provisions of a custody order.
  - The federal information banks which can be searched are: Health and Welfare (Pension Plan data); and Canada Employment and Immigration Commission (employment records, social insurance numbers).
  - Before the police seek access to the federal information banks, the following conditions must be met:

Note: A member of the RCMP in "J" Division HQ, has been listed as a designated recipient.

(1) an Information on Form 1 must be laid and filed with the court alleging abduction by the non-custodial parent; and

(2) an affidavit must be filed with the court, by the designated RCMP member, indicating there are reasonable grounds to believe the missing person(s) have left the province.

(3) Members who have been designated as Recipient Officers may then apply to the Justice Canada Enforcement Unit for tracing assistance. A Crown Prosecutor will normally be required to file court documents and to assist in obtaining tracing information.

## CIVIL PROCEDURES

- Custody and Access orders made by the Family Court under the provisions of either section 130.1 or 132 of the *Family Services Act*, or the *Divorce Act*, are between the parties and are not the responsibility of the police to enforce, unless directed by a court of law.
- If there are no clear directions by a court of law, or if there is no order, police are encouraged to assist by directing persons to seek legal advice to settle such disputes, in the spirit of community based policing, and to possibly avoid any other potential violations of law such as assault, or cause a disturbance, etc.
- Either party to an order for Custody or Access who believes the other party is unlawfully withholding the child or otherwise not complying with the order, may apply to a court under provisions of section 132.1 of the *Family Services Act* for an Order of Apprehension for the purpose of giving effect to the rights of the applicant to custody or access.
- Section 132.1 authorizes a Judge to direct the police to do all things reasonably able to be done to locate, take charge of, and deliver the child in accordance with the order. Such an order must be directed to the police and contain clear directions before police should be involved in its enforcement.
- The custody order itself may have a provision which restricts the movement of the child and specifically directs the police to act. Court Orders issued by any appropriate court in Canada are enforceable in New Brunswick, and police are generally authorized to act.
- If the order is an out of province custody order and it is requested to be enforced, whether or not it contains a provision directing police officers to apprehend, it is recommended that

the officer contact the Crown Counsel assigned to the Court of Queen's Bench Family Division in the region.

- A certified copy should be obtained at a later stage in the investigation, and it is recommended that an out of province order be 'recognized' by a NB court.
- When the situation is either inter-provincial, or international, the appropriate Court will be requested to issue an Order to Apprehend directed to police officers.
- Canada has ratified the Hague Convention on the Civil Aspects of International Child Abduction. This convention allows ratifying states to assist parents/guardians in securing the return of any child abducted and brought to another ratifying state. All provinces/territories have enacted legislation that adopts these provisions. Crown Counsel will also assist in these situations.
- When executing these types of custody orders, it is also recommended that police ensure the Child Protection Services are advised, and requested to assist in the taking into custody of the child.

### 12.2.4 General Information

Charges for Abduction have these common elements:

- The abducted child is under 14 years of age.
- The abducting parent or stranger acted with intent to deprive the (other) parent of the child.
- The parent from whom the child has been taken did not consent to the taking of or detention of the child by the other parent, or stranger.
- The stranger's or abducting parent's actions were not necessary to protect the child from danger of imminent harm.

To assist investigators in these types of investigations, when possible child abuse may be involved, reference should be made to the terms/definitions provided in Section 2.0 of the Child Victims of Abuse and Neglect Protocols.

### **12.3. Department of Justice and Attorney General**

#### **Intervention Guidelines For Public Prosecutions**

##### **12.3.1 Introduction**

In addition to the traditional prosecutorial responsibilities of the Public Prosecutions Branch of the Office of the Attorney General, the services of Crown Counsel are also provided to the Minister of Family and Community Services in adult and child protection cases and to the Central Authority for the Province of New Brunswick for international enforcement of custody orders. As such, the Public Prosecutions Branch can potentially become involved in both civil and criminal aspects of child abduction cases.

##### **12.3.2 Criminal Prosecutions**

Crown Counsel prosecute offences under the *Criminal Code of Canada*.

It is an offence under section 282 of the *Criminal Code of Canada* for a parent to take a child under the age of 14 from the possession of another parent in contravention of the provisions of a custody order. In certain circumstances, even absent a custody order, and with the consent of the Attorney General, the same factual situation may be prosecuted under section 283 of the *Criminal Code of Canada*.

##### **(Schedule A: sections 282-286 of the Criminal Code of Canada)**

The Federal/Provincial/Territorial Ministers responsible for Justice have adopted model parental child abduction charging guidelines to provide some consistency throughout Canada in prosecutions under sections 282 and 283 of the *Criminal Code of Canada*. The guidelines are advisory only, since the ultimate decision whether the evidence will support a conviction rests with the Crown Prosecutor who must analyze the facts of each case in the light of the current case law which interprets these provisions.

##### **(Schedule B: Model Charging Guidelines)**

### **12.3.3 Civil Enforcement of Custody Orders**

#### **Interaction of Police and Crown Counsel**

The police are often the first point of contact for a custodial parent who wishes to enforce a custody order. In such instances, the police may wish to consult Crown Counsel.

Pursuant to section 12 of the *Police Act*, the police have the responsibility to assist in the enforcement of custody orders when the safety or security of a child or other person is at risk. Out-of-province custody orders and apprehension orders directed to police agencies in this province must first be recognized by the Court of Queen's Bench of New Brunswick, Family Division, under section 130.2 of the *Family Services Act*, before execution of the order takes place. Police agencies will more readily recognize this procedure as "backing the order". Crown Counsel are not involved in the recognition process under the *Family Services Act*.

#### **(See Intervention Guidelines for Police.)**

#### **Enforcement of Custody Orders Between Countries**

##### ***The Hague Convention***

A more formalized structure is in place for the enforcement of custody orders between foreign countries than between the provinces. In 1983, all Canadian provinces joined the Government of Canada in ratifying the Hague Convention on the Civil Aspects of International Child Abduction. In New Brunswick, the Hague Convention is embodied in the *International Child Abduction Act*. Signatories to the Hague Convention, including New Brunswick, are called Contracting States.

##### ***Objects of the Hague Convention***

The objects of the Hague Convention are:

- (i) To secure the prompt return of children wrongfully removed from or retained in any Contracting State;
- (ii) To ensure that rights of custody and access under the law of one Contracting State are effectively respected in another Contracting State.



### **Central Authority for the Province of New Brunswick**

The Province of New Brunswick is considered a Contracting State under the Hague Convention. Each Contracting State must maintain a Central Authority responsible for processing applications for the return of children who are wrongfully removed to or from that Contracting State. The Province of New Brunswick has designated the Coordinator of Family Cases of the Office of the Attorney General as its Central Authority. The Coordinator may further delegate this authority to the Family Crown Counsel in the various regions of the Province.

### **Wrongful Removal or Retention**

According to Article 3 of the *International Child Abduction Act*, the removal or retention of a child is to be considered wrongful where:

- (i) It is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention;
- (ii) At the time of removal or retention those rights were actually exercised, either jointly or alone or would have been so exercised but for the removal or retention.

The rights of custody referred to above may arise by reason of a formal decision of a judicial or administrative tribunal or by reason of a legal agreement under the law of the contracting state. According to this Convention, custody rights may also arise “by operation of law” which generally refers to rights arising from an actual custody arrangement which both parties appeared to accept.

“Rights of custody” are defined in Article 5 as including rights relating to the care of the child, in particular the right to determine the child’s place of residence.

The Hague Convention is not designed to enforce rights of access by orders for the return of children; rather Article 21 requires Central Authorities to cooperate in promoting the

peaceful enjoyment of access rights. This is generally interpreted as a responsibility to help mediate the exercise of the non-custodial parent’s right of access in the country where the child is residing.

### **Legal Services of Crown Counsel**

The Central Authority for New Brunswick:

- i. Screens applications received from foreign Contracting States with respect to children wrongfully removed to or retained in New Brunswick;
- ii. Processes standardized applications with proper supporting documentation with respect to the return to New Brunswick of children wrongfully removed to or detained in a foreign Contracting State;
- iii. Acts as liaison with the foreign Central Authority on all procedural matters.

### **Order for Return**

Where a Court determines that a child has been wrongfully removed or detained under the Hague Convention, it must order the immediate return of the child unless such return would expose the child to grave risk of physical or psychological harm or unless the custodial parent has implicitly relinquished his/ her rights of custody. Where more than one year has elapsed from the date of the wrongful removal of the child, the court must still order the child returned unless it is demonstrated that the child is now settled in his/her new environment.

### **Child Protection Involvement in cases under the Hague Convention**

Section 31(1)(j) of the *Family Services Act* provides that a child may be in need of protective care if he/she is in the care of a person who does not have a right of custody.

Consequently, where the Court issues an Order for Apprehension directed to the police, representatives of the Minister of Family and Community Services may utilize their mandate to assist in the safe removal of the child from the non-custodial parent as well as in the prompt and safe return of the child to the custodial parent.

**(See Intervention Guidelines for Child Protection Workers.)**

The Minister of Family and Community Services may take a child into protective care for the purpose of returning him/her to the custodial parent in the foreign jurisdiction. If a child cannot be returned immediately to the custodial parent, it may be necessary for the Minister to place the child in protective care and, if the delay exceeds five days, to make an application for a temporary Custody Order under the *Family Services Act* pending the final arrangements for the return of the child.

*(See also: Intervention Guidelines for Police regarding the free transportation of abducted children with an accompanying adult.)*

In accordance with section 31(2) of the *Family Services Act*, where the Minister of Family and Community Services receives a report or information about any situation that causes him to suspect that the security or development of a child may be in danger, he must investigate and take such steps as are necessary to determine whether the security or development of the child is in danger.

Should the Minister of Family and Community Services determine that the child would be at risk if returned to the foreign Contracting State, he may take the child into protective care and institute child protection proceedings. In this situation, simultaneous applications under the *International Abduction of Children Act* and under the child protection provisions of the *Family Services Act* would place Family Crown Counsel in conflict since they would normally be called upon to act for both Applicants.

If such a situation were to arise, the Coordinator of Family Cases would ensure that the Applicant in one proceeding would be represented by independent counsel hired outside of the Public Prosecutions Branch in order to avoid any potential conflict of interest between the custodial parent and the Minister of Family and Community Services.

**SCHEDULE A: SECTIONS 282-286 OF THE CRIMINAL CODE OF CANADA**

**ABDUCTION IN CONTRAVENTION OF CUSTODY ORDER**

282. (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, in contravention of the custody provisions of a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

(2) Where a count charges an offence under subsection (1) and the offence is not proven only because the accused did not believe that there was a valid custody order but the evidence does prove an offence under section 283, the accused may be convicted of an offence under section 283.

**ABDUCTION — Consent required**

283. (1) Every one who, being the parent, guardian or person having the lawful care or charge, of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, whether or not there is a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

**DEFENCE**

284. No one shall be found guilty of an offence under sections 281 to 283 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent, guardian or other person having the lawful possession, care or charge of that young person.

**DEFENCE**

285. No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm or if the person charged with the offence was escaping from danger of imminent harm.

**NO DEFENCE**

286. In proceedings in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

**SCHEDULE B: MODEL CHARGING GUIDELINES*****Section 282 Of The Criminal Code***

Charges under section 282(1) of the *Criminal Code* may be warranted where:

- 1) A child under the age of 14 is involved.
- 2) There is a court order establishing “custody rights” granted in Canada which is not being complied with.

Note:

- (a) Persons can have different types of “custody rights” under custody orders. Orders can contain different types of terminology. For example, an order may grant a person sole custody, joint custody, periods of care and control [with custody remaining joint between the parents by virtue of provincial legislation] or guardianship. These are all types of “custody rights”.
- (b) It is not necessary to register an order of custody granted from one province before criminal charges can be laid in another. The

investigative agency should, however, consider making inquiries to ascertain whether the custody order is the most current custody order, that the order is still in effect and may request a copy of the order. This can be done through direct inquiries of the complainant, a call to the registrar/court staff from where the order was issued or otherwise.

## 3) The alleged abductor

- (a) is a parent, guardian [defined in s. 280(2)] or other person having the lawful right to care for or charge of a child.
- (b) takes, entices away, conceals, detains, receives or harbours the child.
- (c) is in contravention of the custody provisions of a Canadian custody order [note there is a distinction between custody and access provision terms]; and

## 4) The taking:

- (a) was done by the alleged abductor with the intent to deprive a parent, guardian or person having lawful care or charge of the child of possession of the child contrary to a court order.
- (b) A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking, etc. of the child by the alleged abductor. [Note: Defence in s. 284. The alleged abductor’s consent is not sufficient to avoid a charge.]
- (c) There is no reason to believe that the alleged abductor did not know of the existence or terms of the custody order.

Examples where under Section 282(1) charges may not be appropriate:

- 1) The order is not clear on its face as to the terms of custody allegedly breached and the available evidence does not clarify the nature of the breach.
- 2) There is evidence that the alleged abductor is not aware of the existence of the terms of a custody order prior to the laying of the charge. However, it should be noted that s. 282(2) allows for a conviction under s. 283(1) where it

is found at trial that the accused did not have knowledge of the custody order at the time of the offence. It appears that s. 283 is treated as an included offence and Attorney General consent is implied where the Crown and court rely on s. 282(2).

### **Section 283 Of The Criminal Code**

Charges under section 283(1) of the *Criminal Code* may be warranted where:

- 1) A child under 14 is involved.
- 2) (a) A Canadian custody order exists but the alleged abductor did not believe or know there was a valid order. [See section 282(2).]
  - (b) No Canadian custody order exists, but parental rights of custody under statute or common law exist [for example, provincial family law legislation may indicate that parents have joint custody of their children unless the court orders otherwise].
  - (c) No Canadian custody order exists, but custody rights under a separation agreement or a foreign order have been violated.
  - (d) There has been:
    - (i) *a permanent or indefinite denial of a right of access pursuant to an agreement which provides the access parent with a significant degree of care and control over a child with or without a provision permitting the child's removal from the jurisdiction.*
    - (ii) *a permanent or indefinite denial of a right of access pursuant to a court order<sup>1</sup> which provides the access parent with a significant degree of care and control over a child.* [Note: Various factors may indicate "significant care and control" exists; one factor may be a court order with a non-removal clause.]

For further clarification on what "significant care and control" means, please consult the Crown Attorney. Where the rights of the access parent are not so extensive, resort should be made to civil remedies, which exist in the jurisdiction.

- 3) The alleged abductor
  - (a) is a parent, guardian [defined in s. 280(2)] or other person having the lawful right to care for, or lawful charge of, the child;
  - (b) does so with the intent to deprive the other parent, guardian or person of possession of that child;
- 4) The taking, enticing, etc. was done by
  - (a) the alleged abductor with the intent to deprive a parent, guardian or person having care or charge of the child of the possession of the child. [Note: the non-abducting parent does not need to be in or have been in physical control over the child at the time of the alleged abduction. The notion of possession includes actual possession or a right to possession. This refers to the right of a parent to exercise control over a child. See R. v. Dawson.]
  - (b) A parent, guardian or other person having the lawful care or charge of the child did not consent to the taking, enticing or detention of the child by the alleged abductor. [Note: the alleged abductor's own consent is not sufficient to avoid a charge.]
- 5) Consent of the Attorney General or counsel instructed by him/her for that purpose is obtained.

[Note: The fact that consent has been given may be added to informations under s. 283. For example:

*The Consent of [Crown Attorney] has been obtained to lay this charge, [Crown Attorney] being counsel for the Attorney General instructed for that purpose.]*

Examples of when charges may be authorized by the Attorney General are as follows:

- 1) A child is taken by the alleged abductor from the usual sole or joint possession of another parent in circumstances where there is some degree of permanency, e.g. contrary to an arrangement which has existed between the

<sup>1</sup>Custody and access rights may be found in various court orders including those that precede or supplement custody and access orders such as those dealing with non-removal.

- parties for some time or contrary to the provisions of a written or oral agreement;
- 2) Custody proceedings have been initiated or are anticipated and the alleged abductor, in taking the child, is frustrating proceedings. This may include situations where the court has stated that the child is not to be removed from the jurisdiction pending a determination;
  - 3) There are reasonable grounds to believe one parent has a foreign custody order and the alleged abductor is in breach of such order; [Note: You may want to consult with a Central Authority for purposes of the *Hague Convention on the Civil Aspects of International Child Abduction* in your province or territory to ascertain whether parallel civil proceedings are or may be initiated];
  - 4) The alleged abductor has repeatedly acted in a manner which appears to have violated section 283;
  - 5) The child has been taken by the alleged abductor contrary to the existing parental rights to custody and it appears the alleged abductor may cause harm to the child and a criminal charge is necessary to ensure the protection of the child;
  - 6) The alleged abductor takes a child with intent to deprive the other parent of possession of the child and in contravention of an existing Canadian court order or joint custody law but there is evidence that the abducting parent was not aware of the court order or law;
  - 7) The alleged abductor takes the child surreptitiously and disappears with the child;
  - 8) The alleged abductor takes, etc. the child where there is a provision in an order or agreement restricting the ability of a parent to remove the child from the jurisdiction; or
  - 9) The alleged abductor has taken the child and in so doing has permanently or indefinitely frustrated the access parent's rights, where such rights by their nature involve a significant degree of care and control over the child.

#### Examples Where Charges May Not Be Appropriate:

- 1) Although technically a charge could be laid in a situation where a parent, in the process of separation, moves out of the home with the child, it would be unlikely that a charge would be laid in these circumstances if it appears that the parties are attempting to resolve custody either through the courts or by agreement.
- 2) Where there are competing interim or final orders issued by different courts dealing with the custody of a child, which are valid on their face, the police may need to consult with the Crown counsel to determine if there are reasonable grounds to proceed with an investigation and potential charge or whether further direction from the civil courts is required as to which order has priority or what remedy is appropriate.

Appropriate prosecutorial discretion should be exercised in these circumstances.

#### **Defences Under Section 282(1) And 283(1):**

- 1) It is not a defence to any charge under s. 283 that the young person consented to or suggested any conduct of the accused. (S. 286)
- 2) It is a defence if the alleged abductor establishes that the taking, etc. of the child was done with the consent of the parent, guardian or other person having the lawful possession, care or charge of the child.
- 3) It is a defence:
  - (a) if the child was taken, etc. to protect the child from danger or imminent harm or
  - (b) if the alleged abductor was fleeing from imminent harm and taking the child as well. For example, protecting a child from child abuse would be a defence, as would a parent escaping from a situation of spousal assault and moving the child at the same time. (See s. 285).

## **12.4. Department of Education**

### **Child Abduction Protocols For Education**

#### **12.4.1 Introduction**

In New Brunswick, school attendance is compulsory for children between 5 and 18 years, who have not met graduation requirements thus placing school personnel in a unique position of being able to identify children who may have been abducted very early after the act. Schools districts have procedures in place for all students entering and leaving schools, on both a daily and a long term basis, which lend themselves to early identification of irregularities in the lives of children.

The role of personnel in school districts is strictly one of identification. The educational system has no provision nor mandate for investigation.

#### **12.4.2 Administrative structure**

1. Because school attendance is compulsory, the public expectation is that all children between 5 and 18 years will be attending school. Those who for various reasons may not be in school will be obvious in the community and may be reported to authorities by neighbours.
2. Schools are requested to provide the Department of Education with information about student registration at the beginning of each school year (September 30), and the Department is able to verify the enrollment status of students on any particular day, if required. Districts may keep records of student moves through the transportation manager. Schools maintain daily records of student attendance.
3. It is recommended that schools have a daily "safe arrival" program, whereby the parent or guardian of those students who are absent from school are contacted to ensure that parents/guardians are aware of their absence.
4. Principals should ensure that supply teachers are briefed on any issues regarding the special health needs or security of the students assigned to them during the time they are at the school.

5. The Department of Education has established Policy 710 - Release of Students and Access to Student Information. This policy stipulates that custodial parents are responsible for providing the school with written instructions for release of students (i.e., who is allowed to pick up their children). Schools are also to be informed in writing by the custodial parent if there is a custody order in place denying access to the child or children by the non-custodial parent. **Schools should ensure that parents are aware of their responsibility to notify the administration of any possible threat to the security of their child(ren).**
6. "Student Data Standards" of the Department of Education (1994, currently under revision) outline the procedures to be followed in the event of a student transferring from one school to another, either in or out of province. This document includes guidelines for both the sending and the receiving school. The guidelines are for completion of the "Record of Student Transfer" form and for the acquisition of written parental consent for the release of the student's cumulative record folder to the receiving school. Information required immediately may be obtained by phone, FAX or e-mail from the receiving school. A mechanism is detailed in this document whereby the sending school will be notified of a student who fails to appear in another school in the province within a two-month period.

#### **12.4.3 Procedures**

##### **a. Entry and Leaving School**

The principal must verify that a "School Entry Permit" has been issued for all new students. School district offices, or in some districts the receiving school, will issue "School Entry Permits" to students entering the New Brunswick public school system for the first time (i.e. students entering New Brunswick from other jurisdictions, and students entering the public school system from home/independent schooling situations). Kindergarten students are usually registered at the school prior to their entry.

1. If a parent chooses to withdraw a student with the intent of home schooling or transferring

the student to an independent school, the principal or designate should advise the parent of the parent's legal obligation to obtain an exemption from public education from the Department of Education. The principal or designate should indicate that the student has "Withdrawn" on their ledger.

2. As a receiving school, appropriate personnel must make contact with the sending school for transferring students to ensure continuity of programming and care.
3. The principal or designate of the sending school should attempt to make contact with the identified receiving school for transferring students to ensure continuity of programming and care.
4. If no request for records is received within 2 weeks by the sending school, appropriate school personnel should contact the district office and request that a check be done of the student's whereabouts. If no information is available at the district level, the principal or designate should contact the Policy and Planning Branch of the Department of Education.

**b. Students Currently Enrolled in School**

1. The principal must maintain accurate and current registration and attendance records for all students in the school. This should include the student's Medicare number and a photograph of the student that is no more than one year old, where possible. (Parents do have the right to refuse to provide these pieces of identification.) Individual physical descriptions, such as scars, moles, lips, eye colour, should also be included on the cumulative record.
2. The principal or designate should flag files of students for whom prohibition or contentious custody orders apply so that all school staff responsible for the students during the day can help to ensure their safety at school.
3. The principal or designate should ensure that any visitors to the school, including itinerant staff, present themselves at the office when entering the building, and should ensure that

they are given tags/badges to identify themselves as authorized visitors to the school.

4. The principal and school staff should monitor the playground and school perimeter to ensure that strangers do not linger there. Adequate monitoring should include: appropriate teacher to student ratios for playground supervision; identifying vests be worn by supervising teachers; supervising teachers should have a means of communicating to the school office if a problem arises.
5. The principal should institute a personal safety program for students and review the guidelines with them at least once a year. (This information is covered within the Health Curriculum, K-5 in Anglophone schools and in Formation Personnelle et Sociale curriculum in francophone schools.)
6. The principal and school staff should follow carefully Policy 710 - Release of Students and Access to Student Information, and ensure that any written instructions regarding the release of students and/or information provided by parents is kept up to date.
7. The principal or designate should make contact with the home if a student fails to report to school (safe arrival program). If no contact is possible, the principal or designate should phone the next contact number until some knowledge of the student's whereabouts is ascertained. If the answer received is suspicious, this information should be reported to the police.
8. If failure to attend is lengthy (i.e. over 1 week), the principal or designate should contact the home to ascertain the student's well-being and continued education. If contact with the home is not possible, or is rejected by the parent, this should be reported to local law enforcement and Child Protection officials, who will determine if further action needs to be taken.

9. The principal or designate should report any and all suspicions of abduction immediately to local law enforcement and Child Protection officials. As with the Child Victims of Abuse and Neglect Protocols, the duty to report rests with the individual who has the suspicion.

**c. Possible indicators:**

1. All school staff should be alert to behaviour or comments from either the parents or the student that might lead to the suspicion that there is something amiss in the living arrangements. For example, school personnel might have a reasonable suspicion of abduction if:
  - Upon initial registration with the school district, the parent(s) are vague or refuse to give information concerning schools previously attended by the student;
  - Previous schools contacted for school records reply that the student was never in attendance;
  - Information given by the parent(s) regarding the student is contradictory or leads school personnel to believe that the parent(s) are concealing information or attempting to mislead;
  - The student makes statements that indicate the possibility that an abduction has taken place;
  - Neighbours report the appearance of school-aged students who are at home during school hours;
  - An incoming student strongly resembles a child reported missing by the media
2. The suspected parent is not to be contacted. If the school personnel are correct in their suspicions, contacting the parent may jeopardize the return of the child to the parent with legal custody.





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### 13.1 Legislation

#### 13.1.1 Federal Legislation - Criminal Code of Canada

##### Introduction

The *Criminal Code* is federal legislation which applies uniformly across the country by virtue of the federal government's constitutional authority over criminal law. The *Criminal Code* provides sanctions for many offences which involve children. Some offences are specific to children only, where only a child can be a victim.

Where evidence of a crime exists and a charge is laid, the criminal justice process can be brought to bear against an accused. The consequences of this are considered serious in terms of possible penalties. A wide range of dispositions can be imposed upon a person convicted of a criminal offence including probation supervision, imprisonment and other restrictions on freedom and liberty. Thus, the criminal process is proscribed by the *Charter of Rights and Freedoms* to ensure fairness in the treatment of an accused by the courts and criminal justice personnel.

Many protections which are extended to the accused by the *Charter of Rights and Freedoms* arise from the traditionally high standards of admissibility of evidence and burden of proof beyond a reasonable doubt in criminal proceedings. These protections arise primarily from the fundamental principle of criminal law which is that the accused shall be presumed to be innocent until proven guilty. This presumption of

innocence does not apply to civil law proceedings. The burden of proof in civil matters such as child protection is proof on a balance of probabilities. In other words, in a civil proceeding, if evidence demonstrates that the allegations are more probably true than not true, the case will have been proven, unless a lawful explanation exists for the conduct. In a criminal case, the burden of proof beyond a reasonable doubt is much higher.

##### Offences

The following is a list of offences contained in the *Criminal Code* which may involve children as victims. Some of them are specific crimes against children. All of them involve some degree of violence, force, indecency or neglect.

<b>Offences</b>	<b>Section Number</b>
Correction of Child by Force	Section 43
Sexual Interference	Section 151
Invitation to Sexual Touching	Section 152
Sexual Exploitation	Section 153
Incest	Section 155
Anal Intercourse	Section 159
Bestiality	Section 160
Breach of Prohibition Order	Section 161
Corrupting Morals	Section 163
Parent or Guardian Procuring Sexual Activity	Section 170
Householder Permitting Sexual Activity	Section 171
Corrupting Children	Section 172
Indecent Acts	Section 173
Nudity	Section 174
Procuring	Section 212
Offence in Relation to Prostitution	Section 213
Duty of Persons to Provide Necessaries	Section 215
Abandoning Child	Section 218

Criminal Negligence	Section 219
Causing Death by Criminal Negligence	Section 220
Causing Bodily Harm by Criminal Negligence	Section 221
Killing by Influence on the Mind	Section 228
Murder	Section 229
Murder in Commission of Offences	Section 230
Murder Reduced to Manslaughter	Section 232
Infanticide	Section 233
Killing Unborn Child in Act of Birth	Section 238
Counselling or Aiding Suicide	Section 241
Neglect to Obtain Assistance in Child Birth	Section 242
Concealing Body of Child	Section 243
Causing Bodily Harm with Intent	Section 244
Administering Noxious Thing	Section 245
Assault	Section 265
Assault with a Weapon or Causing Bodily Harm	Section 267
Aggravated Assault	Section 268
Unlawfully Causing Bodily Harm	Section 269
Torture	Section 269.1
Sexual Assault	Section 271
Sexual Assault with a Weapon or Causing Bodily Harm	Section 272
Aggravated Sexual Assault	Section 273
Kidnapping*	Section 279
Abduction of Person Under 16*	Section 280
Abduction of Person Under 14*	Section 281
Abduction in Contravention of Custody Order*	Section 282
Abduction Where No Custody Order*	Section 283

\* *These offences will be the subject of separate Child Abduction Protocols. Child abuse may not always be present in an abduction case.*

## Special Provisions

### *Age of "child"*

There is no comprehensive definition of "child" in the *Criminal Code*. Part VIII which deals with Offences Against the Person and Reputation simply states that "child" includes an adopted child and an illegitimate child". If a child is an offender, section 13 of the *Criminal Code* prohibits a conviction for an offence committed by a person under 12 years of age. If a child is a victim, the offence section will make it clear what age group the offence includes, if it is a child-specific offence. Generally, there are two child-victim age categories in the *Criminal Code*: 1) under 14 and 2) over 14 but under 18 years of age. Many of these offences do not use the term "child" but rather refer to a "young person". Child-specific offences do not include persons over 18.

### *Definition of "assault"*

According to the definition of "assault" contained in Section 265 of the *Criminal Code*, a person commits an assault when:

- i) without the consent of another person, he applies force intentionally to that other person, directly or indirectly, or
- ii) he attempts or threatens by an act or gesture, to apply force to another person, if he has or causes that other person to believe on reasonable grounds that he has present ability to effect his purpose.

This definition of assault applies to all forms of assault including sexual assault. An assault becomes sexual assault when it is committed in circumstances of a sexual nature. Whether or not an assault is sexual depends on several factors including the sexual or carnal context, the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act and all other circumstances surrounding the conduct, including threats, force, intent and motive.

### *Punishment for Assault*

- i) **Assault** - Assaults can be either indictable or summary conviction offences depending on the seriousness of the assault. For an indictable

assault, a person is liable to imprisonment for a term not exceeding five years. For a summary conviction assault, a person is liable to a fine of not more than \$2000 or to imprisonment for six months or both. All summary conviction offences carry this penalty.

**ii) Sexual Assault** - A minor sexual assault can receive the same minimum penalty as summary conviction assault but a higher maximum of imprisonment not exceeding ten years when it is more serious in nature.

**iii) Assault with a Weapon or Assault Causing Bodily Harm** - Penalties increase as the offences become more serious. Assault with a weapon or assault causing bodily harm is an indictable offence punishable by a term of imprisonment not exceeding ten years.

This offence occurs when a person carries, uses or threatens to use a weapon or an imitation of a weapon or causes bodily harm to the complainant. "Bodily harm" is defined as any hurt or injury to the complainant that interferes with the health or comfort of the complainant and that is more than merely transient or trifling in nature.

**iv) Sexual Assault with a Weapon or Sexual Assault Causing Bodily Harm** - This offence is committed when, in committing a sexual assault, a person carries, uses or threatens to use a weapon or an imitation weapon or causes bodily harm to the complainant. This is an indictable offence punishable by ten years imprisonment.

**v) Aggravated Assault** - An aggravated assault is committed when a person wounds, maims, disfigures or endangers the life of a complainant. Everyone who commits an aggravated assault is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.

**vi) Aggravated Sexual Assault** - An aggravated sexual assault is committed when, in committing sexual assault, a person wounds, maims, disfigures or endangers the life of a complainant. Everyone who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

### **Correction of Child by Force**

Section 43 of the *Criminal Code* provides a statutory defence to assaulting a child in certain situations involving discipline.

The section reads:

*"Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."*

### **Consent**

An important element of the assault offence is that the other person did not consent to the application of force to his or her person. The classic example of consensual assault is participation in contact sport of many varieties. In fact, ordinary sexual activity is an example of physical touching which but for its consensual nature, would otherwise be a criminal offence.

The presence or lack of consent in criminal cases involving adults has been the subject of much controversy in and out of court. The law presumes that adults are capable of giving free and informed consent. Thus, the consent of the complainant becomes an important part of any defence to a sexual assault.

Consent is not an issue in cases involving children under the age of 14. Section 150.1 of the *Criminal Code* provides that, where an accused is charged with certain types of sexual offences in respect of a complainant under the age of 14, it is not a defence that the complainant consented to the activity that forms the subject matter of the charge. An exception is made in respect of a complainant who is between 12 and 14 and an accused who is between 12 and 16, who is less than 2 years older than the complainant and who is not in a position of trust or authority toward her or in a relationship where she is dependant on him. This defence was made available for "young love" cases where public policy required a less strict test of criminality. Beyond this, the *Criminal Code* will not permit an accused to plead that he believed that the complainant was over 14 at the time of the offence, unless he took all reasonable steps to ascertain her age.

Some sections of the *Criminal Code* extend the age of the victim to 18. In those cases, when the victim is between the age of 14 to 18, consent is available as a defence. Again, however, it is not a defence that the accused believed the complainant was over 18 at the time of the offence, unless he took all reasonable steps to ascertain her age.

### **Sexual Offences Specifically Involving Children**

**Sexual Interference** - Section 151 creates an offence against "any person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 14 years."

**Invitation to Sexual Touching** - Section 152 provides that "every person who, for a sexual purpose, invites, counsels or incites a person under the age of 14 years to touch, directly or indirectly with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 14 years" is guilty of an offence.

**Sexual Exploitation** - Section 153 provides that this offence is committed when a person "who is in a position of trust or authority toward a young person or is a person with whom the young person is in a relationship of dependency and who (i) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person, or (ii) for a sexual purpose, invites, counsels or incites a young person to touch directly or indirectly with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person."

Because of the breach of trust which is an essential element of this offence, the age category of the victim includes a victim over 14 years of age but under 18.

### **Other Offences Against Children and Young Persons**

**Incest** (Section 155) - Incest is committed by everyone "who, knowing that another person is by blood relationship his or her parent, child,

brother, sister, grandparent or grandchild, has sexual intercourse with that person."

**Anal Intercourse** (Section 159) - This offence is self explanatory. Husbands and wives as well as couples over the age of 18 can consent to the act as long as the act is engaged in, in private.

**Child Pornography** (Section 163.1) - Child pornography is defined as a photograph, film, video or other visual representation that shows the person who is or is depicted as being under the age of 18 and is engaged in or is depicted as engaged in explicit sexual activity. Child pornography can also include the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18. Any written material or visual representation that advocates or counsels sexual activity with a person under the age of 18 is also prohibited.

**Corrupting Children** (Section 172) - It is an offence for "everyone who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in".

**Corrupting Morals/Pornography/Obscene Publications** (Section 163) - A person commits an offence when he makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, phonograph record or other thing whatever.

**Indecent Act/Obscenity** (Section 173) - According to this section, "everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place, with intent thereby to insult or offend any person", is guilty of an offence.

**Exposure** (Section 173) - By virtue of the same section it is also a summary conviction offence against "every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 14 years".

**Order of Prohibition** (Section 161(1)) - Where an offender is convicted or receives a conditional discharge for a sexual offence involving a person

who is under the age of 14, the court may make an order prohibiting the offender from attending a public park or public swimming area where persons under the age of 14 are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre. The court may also prohibit the offender from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity that involves being in a position of trust or authority toward children under the age of 14 years.

## **Evidence of Children**

### ***Testimonial Aids***

If certain legal standards are met, it may not be necessary for a child to have to directly confront the alleged offender face to face in the courtroom while testifying.

Section 486 provides that, where an accused is charged with any one of a number of types of sexual offences (which are listed in the section) and the victim is under the age of 18, a presiding judge may order that the complainant testify outside the courtroom by closed circuit television or behind a screen in the courtroom so that the complainant cannot see the accused. This means of testifying is not routinely available on request to all witnesses under 18. The Crown must call evidence to satisfy the judge that the exclusion of the child in this way is necessary in order to obtain a full and candid account of the acts complained of from the complainant. Thus, a "necessity test" must be met before this type of order can be made.

### ***Exclusion of the Public***

All criminal proceedings are presumed to be held in open court for public viewing. However, section 486 of the *Criminal Code* allows a judge who is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice, to exclude all or any members of the public from the courtroom for all or part of the proceedings.

### ***Support for Child Witnesses***

Section 486 of the *Criminal Code* ensures that the interests of witnesses under the age of 14 years who have been victims of sexual offences or an offence involving violence be safeguarded. It allows the court to order that a support person of the witness's choice be permitted to be close to the witness while testifying.

### ***Accused Cross-Examination of Child Witness***

In proceedings where sexual or physical violence is alleged to have been used against a child, the *Criminal Code* prohibits the accused from personally cross-examining a witness who is under the age of 14 years unless the court is of the opinion that the proper administration of justice requires the accused to personally conduct the cross-examination.

### ***Ban on Publication***

In proceedings to hear evidence in relation to a number of types of sexual offences listed in section 486 of the *Criminal Code*, the judge may order that the identity of the complainant or of a witness and any information that could disclose the identity of the complainant or witness not be published in any document or broadcast in any way. The judge must, at the first reasonable opportunity, inform any witness under the age of 18 and the complainant in these types of sexual offence hearings of the right to make application for this kind of order. It is an offence for any person to fail to comply with such an order, once made.

### ***Corroboration***

Corroboration is other independent evidence which supports the complainant's version of events as being true. By virtue of section 274 of the *Criminal Code*, the rule of evidence requiring corroboration has been eliminated. The section also contains a prohibition against a judge instructing a jury that it is unsafe to find the accused guilty in the absence of corroboration.

### ***Children's Evidence***

It is no longer proper for a court to be required to give the jury a warning about convicting an accused on the evidence of a child. Judges may

warn a particular jury about the frailties of the evidence of a particular child in an isolated criminal proceeding, if there is a proper foundation for such a warning. However, it is not proper to warn a jury about convicting on the evidence of a child for the reason that, as a class of witness, children's evidence is considered inherently unreliable.

## Canada Evidence Act

### *Oath/Affirmation/Promise to Tell the Truth*

According to section 16 of the *Canada Evidence Act*, a witness under the age of 14 years must be questioned by the court before giving evidence to determine:

- i) whether the person understands the nature of an oath or solemn affirmation; and
- ii) whether the person is able to communicate the evidence.

If, after the inquiry, the court finds that the witness understands the nature of an oath or solemn affirmation and is able to communicate the evidence, the witness shall testify under oath or solemn affirmation.

If the court finds that the witness does not understand the nature of an oath or solemn affirmation but is able to communicate the evidence, that person may be permitted to testify on promising to tell the truth. Children as young as three years old have given evidence on a promise to tell the truth in New Brunswick.

A person will not be permitted to testify if they both do not understand the nature of an oath or solemn affirmation and are unable to communicate the evidence.

If the mental capacity of a proposed witness of 14 years of age or more is challenged, the party challenging has the burden of satisfying the court that there is an issue as to the capacity of the proposed witness to testify under an oath or solemn affirmation.

## Youth Criminal Justice Act

The *Youth Criminal Justice Act* is the "criminal law" which applies to young persons between 12 and 18 years of age. Under this legislation, a young person can be charged with any offence prescribed by federal legislation, including the *Criminal Code*. However the procedure and penalties for young persons are quite different than for adults.

## Provincial Legislation

There are a number of provincial statutes which confer legislative authority to act in relation to certain offences or procedures, including the *Victim Services Act*, the *Compensation for Victims of Crime Act*, the *Police Act* and the *Family Services Act*. The *Family Services Act* is the primary Act for the protection of children.

### 13.1.2 Family Services Act

- Introduction and Preamble
- Definitions under the Act
- Highlights of the Act

#### Introduction

The *Family Services Act* applies in New Brunswick only under the province's legislative authority over family law, including child protection proceedings, as distinguished from the *Criminal Code* which is federal legislation.

Child protection workers are persons designated to act on behalf of the Minister of Health and Community Services pursuant to the ministerial powers referred to in section 3(1) of the *Family Services Act*.

In all their decisions, representatives of the Minister must be guided by what is seen to be in the "best interests" of children.

#### Preamble of the Act

The whole of the *Family Services Act* should be read in light of the declaration of principles at the beginning of the Act which recognizes the basic rights and fundamental freedoms of children and their families, as well as the family as the basic unit of society.

## Definitions Under the Act

### **Definition of child**

Generally speaking, a child is a person actually or apparently under the age of majority, which is the age of 19 years in New Brunswick.

However, the legislative authority of the Minister to provide protection services and take a child into protective care is limited by regulation which states "...the Minister shall not take a child into care who is actually or apparently over the age of 16 except where the child is a disabled person". Also for the purposes of Part III of the Act, "child" means a person actually or apparently under the age of sixteen, and includes a disabled person actually or apparently under the age of nineteen.

### **Definition of "Best Interests"**

The "best interests of the child" is the most important test for all administrative and judicial decisions taken under the legislation. Therefore, the legislation has attempted a definition of the term as meaning "the best interests of the child under the circumstances taking into consideration" such things as the mental, emotional and physical health of the child, the views and preferences of the child, the need to provide a secure environment and the child's religious and cultural heritage.

## Highlights of the Act

### **Consideration of the Child's Wishes**

Section 6 of the *Family Services Act* states that in any matter or proceeding "whether before a court or any person having authority to make a decision that affects a child, the child has the right to be heard, whether on his own behalf or through his parent or another responsible spokesman".

### **Appearance of the Child in Court**

The legislation does not require children, who are the subject of proceedings, to appear in court when the court is of the opinion that it would be in the best interests of the child not to appear and the child will not be prejudiced.

### **Legal Representation of Children**

In a child protection case, where the Minister is a party to the proceeding, the court may be of the opinion that the interests and concerns of the child shall be represented by a lawyer. The judge may advise the Attorney General that counsel should be made available.

### **Open or Closed Courtroom**

A hearing under the *Family Services Act* may be held in whole or in part in open court or "in camera" (in private).

### **Ban on Publication of Identity of Child or Parent**

Section 10(2) prohibits the publication of the name of a child who is before the court in any proceeding or the name of the parent of such child or the publication in any other way of information which identifies the child or parent.

### **Confidentiality**

Section 11(1) of the *Family Services Act* makes "all information acquired by the Minister or any other person in relation to any person or matter under the Act, whether of a documentary nature or otherwise", confidential to the extent that its release would tend to reveal personal information about a person identifiable from the release thereof.

The Minister is permitted to release confidential information to "another Minister of the Crown or his servant". To release confidential information to any other person, the Minister must have the consent of the person from whom the information was obtained and to whom the information relates.

### **Mandatory Reporting**

Section 30(1) provides:

Any person who has information causing him to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill treated, or otherwise abused, shall inform the Minister of the situation without delay.

It is an offence under section 30(3) for a professional person to fail to report a child in any of the circumstances described above, if that



person acquired the information in the discharge of his or her professional responsibilities.

### ***Duty to Investigate***

Where the Minister receives a report or information that causes him to suspect that the security or development of a child may be in danger, he must investigate and take such steps as he considers necessary to protect the child.

### ***Security or Development of a Child in Danger***

Section 31(1) states that the security or development of a child may be in danger when:

- the child is without adequate care, supervision or control;
- the child is living in unfit or improper circumstances;
- the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
- the child is in the care of a person whose conduct endangers the life, health or emotional wellbeing of the child;
- the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
- the child is living in a situation where there is domestic violence;
- the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or wellbeing of the child or refuses to permit such care or treatment to be supplied to the child;
- the child is beyond the control of the person caring for him;
- the child by his behaviour, condition, environment or association, is likely to injure himself or others;
- the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;

- the child is in the care of a person who neglects or refuses to ensure that the child attends school; or
- the child has committed an offence or, if the child is under the age of twelve years, has committed an act or omission that would constitute an offence for which the child could be convicted if the child were twelve years of age or older.

### ***Duty of Police Officers***

A peace officer who has reason to suspect that a child is abandoned, deserted, abused or neglected may apprehend the child. If an officer apprehends the child, he or she is required to immediately notify the Minister. There are several situations where the assistance of a peace officer may be requested by a child protection worker, including dangerous situations.

### ***Protective Care Placements***

Where the Minister believes that the child will not otherwise be protected, he may place the child under protective care.

### ***Removal of Child or Accused by Force***

The Minister is authorized to remove a child from any environment where the child may be in danger.

Where a child is under the protective care of the Minister but remains in his/her own home, and the Minister has reason to believe that a person may endanger the security or development of the child, the Minister may apply to a court for a warrant authorizing the removal of the offending person and/or the arrest and detention of the offending person.

The Minister may request the assistance of any peace officer in order to perform this authority.

### ***Notice of Protective Care Placement***

Where the Minister has placed the child under protective care, the Minister shall "immediately advise the parent of the child stating the action taken and giving reasons for the action taken, wherever possible".

### ***Custody and Guardianship Agreements***

The Minister and the parent may enter into a custody agreement whereby the parent temporarily transfers the custody, care and control of the child to the Minister for a period of up to a year.

The Minister may also enter into a guardianship agreement with the parent of a child under 6 months of age, to accept the transfer on a permanent basis of the guardianship of the child, including the custody, care and control of, and all other parental rights and responsibilities with respect to, the child.

### ***Court Orders***

After hearing evidence, the court may make one of the following orders:

- The court may make a supervisory order authorizing the Minister to exercise supervision of the child, the child's family, the management of their property and other affairs having a substantial bearing on the child's security and development, for a period of up to six months in accordance with conditions set out in the order.

An order under this section can be extended for further periods of up to six months.

Where the court makes a supervisory order, the guardianship and custody of the child remains with the parent but the Minister has access to the child and to the home in order to supervise the conditions of the order.

- Under section 55, the court may make a custody order transferring the custody, care and control of the child to the Minister for up to six months.

The Court may extend an order for custody up to a maximum of 24 consecutive months including the period of the initial order and any pre-existing custody agreement.

Where a child is in care under a custody order, the Minister may place the child in any facility he considers to be appropriate for the child and shall allow the parent reasonable access to the child, or may return the child to the parent or place the child with a member of the child's immediate family.

Where a custody order is made, the court must determine the support obligations of the parent and can make an order with respect to support of the child.

- The court may make a guardianship order transferring from the parent to the Minister on a permanent basis, the custody, care and control of, and all parental rights and responsibilities with respect to, the child.

Unless varied, a guardianship order remains in effect until the child is adopted, marries or reaches the age of majority.

- The court may make a place of safety order authorizing the Minister to place the child in a place of safety for a period of up to six months each, if satisfied that a child in the custody of or under the guardianship of the Minister is likely to do harm to himself or another.
- The court may make a protective intervention order directed to any person who, in the opinion of the court, is a source of danger to a child's security or development. A protective intervention order can contain such provisions as the court considers to be in the best interests of the child, including a direction to the person named in the order to cease to reside in the same premises in which the child resides and/or to refrain from any contact or association with the child.

A protective intervention order remains in force for a period stated in the order not to exceed twelve months and may be extended for additional periods of up to twelve months each.

At the time of making a protective intervention order, the court must determine the support obligations of the person to his dependents and may make a support order.

### 13.1.3 Education Act

#### ***Non-professional conduct by school personnel***

The *Education Act* requires every “professional” to report to the Minister of Education any information which causes him/her to believe that school personnel subjects a child (under the age of 19), to actions which have, or are likely to have “an injurious effect on the (child’s) physical, mental, social or emotional well-being”.

This duty to report applies to any “professional” who, by virtue of his/her employment or occupation, has a responsibility to discharge a duty of care towards a child. Failure to report such information to the Minister of Education is an offence under the *Education Act*.

Professional means a professional person as defined in subsection 30(10) of the *Family Services Act*.

Whenever possible, the information supplied should be recorded on a Complaint Summary form of Policy 701 (see Appendix 13.3) and submitted to the Human Resources Branch of the Department of Education. However, the report can be made by phone or in person.

*31.1(4) A member of the school personnel shall immediately report to the superintendent concerned the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.*

*31.1(5) A professional person who is not a member of the school personnel shall immediately report to the Minister the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.*

*31.1(6) This section applies notwithstanding that the person has acquired the information through the discharge of his or her duties or within a confidential relationship.*

**CHILD ABUSE / NEGLECT  
REFERRAL FORM**



**FORMULE DE SIGNALEMENT / ENFANTS  
VICTIMES DE MAUVAIS  
TRAITEMENTS OU DE NÉGLIGENCE**

76-5185 (8/03)

DEPARTMENT OF FAMILY AND COMMUNITY SERVICES  
GENERAL REFERRAL FORM TO BE USED FOR  
PROFESSIONAL REPORTS

MINISTÈRE DES SERVICES FAMILIAUX ET COMMUNAUTAIRES  
FORMULE GÉNÉRALE DESTINÉE AUX PROFESSIONNELS  
AUTEURS D'UN SIGNALEMENT

IF MORE THAN ONE CHILD, ATTACH LIST / IL Y A PLUS D'UN ENFANT, ANNEXER UNE LISTE COMPLÈTE	
Name of Child Nom de l'enfant	Name(s) of Parents Nom des parents
Address Adresse	
Date of Birth Date de naissance	Sex <input type="checkbox"/> M <input type="checkbox"/> F Sexe <input type="checkbox"/> M <input type="checkbox"/> F
Language <input type="checkbox"/> French <input type="checkbox"/> English <input type="checkbox"/> Other Langue <input type="checkbox"/> Français <input type="checkbox"/> Anglais <input type="checkbox"/> Autre	
Present location of Child Demeure actuelle de l'enfant	
Present Caretaker (if different than parent) Tuteur actuel de l'enfant (si différent des parents)	
Address (es) Adresse (s)	
Address (es) Adresse (s)	
Address (es) Adresse (s)	
Telephone No(s) No(s) de téléphone	Relationship to victim Lien avec la victime
Approximate date of incident(s) Date approximative de l'incident	
Location of incident(s) Lieu de l'incident	
WITNESS(ES) TO INCIDENT / TÉMOIN(S) DE L'INCIDENT	
Name / Nom	Address / Adresse
Telephone / Téléphone	
Describe situation causing concern (attach additional sheet, internal form, charts, etc. if necessary).	
Décrire la situation suscitant l'inquiétude ( au besoin, annexer des feuillets supplémentaires, des formulaires internes, des schémas, etc.).	
Is there prior history of neglect / abuse / suspicious injuries? Y a-t-il eu des antécédents de mauvais traitements, de négligence ou de blessures suspectes? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Oui <input type="checkbox"/> Non <input type="checkbox"/> Ne sais pas <input type="checkbox"/>	
Explain Expliquer	
Referral made by Auteur du signalement	
Date of referral Date du signalement	
Address Adresse	
Position Emploi	
Telephone No No de téléphone	
Name of Agency / Organization Nom de l'organisme / organisation	
Is this confirmation of a verbal report? S'agit-il de la confirmation d'un signalement verbal? Yes <input type="checkbox"/> No <input type="checkbox"/> Oui <input type="checkbox"/> Non <input type="checkbox"/>	
Date verbal report made Date du rapport verbal	
Made to whom Destinataire	
Will you permit your name to be given to the family as a referring person? Nous autorisez-vous à divulguer à la famille que vous êtes l'auteur du signalement? Yes <input type="checkbox"/> No <input type="checkbox"/> Oui <input type="checkbox"/> Non <input type="checkbox"/>	
FEEDBACK TO REFERRAL SOURCE	ACCUSÉ DE RÉCEPTION À L'AUTEUR DU SIGNALEMENT
As the referring person, do you wish to receive: Verbal <input type="checkbox"/> Written <input type="checkbox"/> No <input type="checkbox"/> feedback upon completion of this investigation?	En tant qu'auteur du signalement, désirez-vous être mis au courant : verbalement <input type="checkbox"/> par écrit <input type="checkbox"/> pas du tout <input type="checkbox"/> des résultats de l'enquête?
Will you continue to be involved in a professional capacity with this child / family? Yes <input type="checkbox"/> No <input type="checkbox"/>	Continuerez-vous à dispenser des services professionnels à cet enfant ou à cette famille? Oui <input type="checkbox"/> Non <input type="checkbox"/>
Are you willing to participate in the assessment / treatment of the referred problem if confirmed (where appropriate)? Yes <input type="checkbox"/> No <input type="checkbox"/>	Êtes-vous disposé à participer à l'évaluation et au traitement du problème s'il est confirmé qu'il y a problème? Oui <input type="checkbox"/> Non <input type="checkbox"/>
Signature of Referring Person / Signature de l'auteur du signalement	
FOLLOWING TO BE COMPLETED BY CHILD PROTECTION WORKER AND RETURNED TO REFERRING PERSON	SECTION À ÊTRE COMPLÉTÉE PAR LE TRAVAILLEUR DES SERVICES DE PROTECTION DE L'ENFANCE ET RETOURNER À L'AUTEUR DU SIGNALEMENT
I wish to advise you that our investigation of your referral dated _____ is completed and we have <input type="checkbox"/> have not <input type="checkbox"/> been able to confirm your suspicions.	Je désire vous informer que l'enquête à laquelle a donné lieu votre signalement du _____ est terminée et qu'elle a permis <input type="checkbox"/> qu'elle n'a pas permis
This family <input type="checkbox"/> will <input type="checkbox"/> will not be serviced as a Child Protection case.	<input type="checkbox"/> de confirmer vos soupçons. Cette famille fera <input type="checkbox"/> ne fera pas <input type="checkbox"/> l'objet d'une
We will <input type="checkbox"/> will not <input type="checkbox"/> be contacting you regarding your role in the development and implementation of an intervention plan for the child / family. Please contact the undersigned if you require more information or if you have questions / concerns regarding our findings. Thank you for your referral of this child / family.	intervention par les services de protection de l'enfance. Nous communiquerons <input type="checkbox"/> nous ne communiquerons pas <input type="checkbox"/> avec vous afin d'obtenir votre aide dans l'élaboration et la mise en oeuvre d'un plan d'intervention à l'intention de l'enfant et de sa famille. Veuillez communiquer avec le soussigné si vous désirez obtenir de plus amples renseignements ou si vous désirez poser des questions sur les résultats de notre enquête. Merci de nous avoir signalé ce cas.
Child Protection Worker Travailleur de la protection de l'enfance _____	Date _____
Supervisor / Surveillant _____	Date _____

White - Regional Office  
Blanc - Bureau régional

Canary - Retained by Referral Source  
Canari - Copie à l'auteur du signalement

Pink - Returned to Referral Source  
Rose - Retournée à l'auteur du signalement

### 13.3 Policy 701

  
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**POLICY 701**

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**Subject:** Policy for the Protection of Pupils  
**Effective:** September 26, 1996  
**Revised:** September 1998, November 2004

#### 1.0 PURPOSE

This policy is intended to:

- protect pupils from non-professional conduct by adults to which pupils may be exposed by virtue of being pupils, including physical, sexual, and emotional abuse and discrimination;
- ensure that adults in the public education system understand the magnitude of the responsibility conferred upon them when parents and communities entrust their children to the public education system; and
- eliminate non-professional conduct through the defining of acceptable standards of behaviour, prevention and effective intervention.

#### 2.0 APPLICATION

##### 2.1 To whom does this policy apply?

This policy protects all pupils who are registered in public schools in New Brunswick regardless of their age. This policy applies to all adults whose job or role within the public school system places them in contact with pupils. This includes, but is not limited to, all school personnel, contract and casual employees, visiting professionals, as well as student teachers and volunteers.

##### 2.2 Under what circumstances does this policy apply?

- Whenever a pupil is the responsibility of the school system.
- When an adult affiliated with the school system abuses any child, whether the child is a pupil or not.
- When external agencies are involved and when they are not.

#### 3.0 DEFINITIONS

**Complainant** in this policy refers to a person reporting non-professional conduct.

**Complaint** in this policy refers to any information received by any means from any named or anonymous source, either in person or recorded, which suggests that a child is being, or has

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been, subjected to non-professional conduct by an adult in the school system. Concerns about inappropriate behaviour management are not treated as complaints under this policy.

**Conduct categories** This policy deals with behaviours that harm students and impede learning. These behaviours are grouped into two categories: abuse and misconduct, and are treated as non-professional conduct under the *Education Act*. Other unacceptable, but less serious behaviours are addressed in the guidelines section of this policy and are referred to under the heading of inappropriate behaviour management.

**Category I: Abuse** refers to behaviour of adults in the school system which has one or more of the following components:

- is counter to the position of trust conferred upon adults in the school system;
- is a breach of section 31(1) of the *Family Services Act*;
- is a *Criminal Code* offence involving children; or
- is a form of discrimination under the *New Brunswick Human Rights Act* or the *Canadian Charter of Rights and Freedoms* that is likely to have an injurious effect on students.

**Examples of Abuse**

- discriminatory behaviour based on race, colour, religion, national or ethnic origin, ancestry, place of origin, age, disability, marital status, sexual orientation, sex, culture, language group, or grade level;
- behaviour of a sexual nature with pupils such as: making or accepting sexual advances or invitations, asking for a date, touching inappropriately or having a sexual relationship; and
- behaviour which is considered physical, sexual or emotional abuse or neglect of a child whether or not the child is a pupil in the public school system.

**Category II: Misconduct** is negative conduct towards pupils that would be judged inappropriate by professionals in the New Brunswick public education system. It is less severe than abuse but has damaging effects on the physical, mental, social or emotional well-being of pupils. These effects may or may not be intended.

**Examples of Misconduct**

- attempting to pursue, isolate or see pupils individually without valid reason;
- behaviour which may not necessarily be directed at anyone in particular but creates a hostile or offensive atmosphere;

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- behaviour which would objectively be considered offensive or insulting, exceeding reasonable limits of discipline and has remained unremedied after normal intervention by supervisors. This includes:
  - comments, conduct or displays which demean, belittle, or cause unfair disadvantage;
  - staring, perceivable to an observer, at genitals, breasts or buttocks; and
  - making sexual gestures or inappropriate comments or jokes.

**Examples of Appropriate Behaviour**

- normal work or achievement evaluations and disciplinary measures taken for valid reasons which are consistent with the *Education Act*;
- physical force or restraint not exceeding that required for the protection of an orderly learning environment, personal safety, the protection of others, or the protection of school property;
- compliments which respect an individual's dignity;
- patting the back, holding the hand, or hugging to comfort a pupil as appropriate to the situation and the physical or developmental age of the child; and
- assisting with toileting or personal care to the extent that a pupil is not able to perform these tasks without assistance.

**False accusation** means a complaint under this policy which the complainant knew to be untrue. This differs from an *unsubstantiated complaint* in that unsubstantiated complaints are made in good faith but insufficient evidence exists to either prove or disprove the veracity of the complaint. Unfounded complaints are those where the evidence demonstrates that the respondent is not guilty of a Policy 701 infraction.

**Non-professional conduct** is defined in section 31.1 of the *Education Act* as: “conduct having or likely to have an injurious effect on the physical, mental, social or emotional well-being of a pupil, or any other person under the age of 19 years”.

**Respondent** refers to the person or persons against whom allegations are made under this policy.

**School personnel** refers to the superintendent, director of education and other administrative and supervisory personnel; school bus drivers; building maintenance personnel including custodians; secretaries and clerks; teachers; persons other than teachers engaged to assist in the delivery of programs and services to students; and other persons engaged in support areas such as social services, health services, psychology and guidance. For the purposes of this policy, school personnel includes any adult whose job or role within the public school system places him/her in contact with pupils.

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**4.0 GOALS / PRINCIPLES**

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- 4.1** The Department of Education is committed to providing learning environments that are safe, orderly, inviting, and conducive to the pursuit of excellence. Adults in the public education system are essential to achieving this through the modeling of appropriate behaviour and through the care that they provide to pupils.
- 4.2** Because of the position of trust held by adults in the public education system, a student cannot give consent, in the full meaning of the word, to being the target of non-professional conduct. Failure by a student to report, or attempt to stop non-professional conduct directed at him/her, cannot be taken as justification for non-professional conduct. Moreover, ignorance of acceptable conduct will not be considered an excuse for non-professional conduct.
- 4.3** Education is the most basic prevention. Abusive behaviour must be treated as destructive, seriously affecting individuals and the school system as a whole.

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**5.0 REQUIREMENTS / STANDARDS**

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**5.1 PREVENTION****5.1.1 Screening Practices**

- 5.1.1.1** Superintendents shall ensure screening procedures, appropriate to a person's role vis-à-vis students, are carried out for all persons who act on the superintendent's behalf in the school system, including volunteers.
- 5.1.1.2** Any previous incident that would be classified as non-professional conduct must be evaluated in relation to the requirements of the position.
- 5.1.1.3** No person shall be considered for duty in the New Brunswick public school system if:
- pending or past disciplinary actions by previous employers or supervisors call into question the individual's suitability for being in contact with pupils;
  - there are previous convictions for violent crimes or crimes against children; or
  - there are previous charges related to violent crimes or crimes against children which did not result in conviction solely as a result of technical reasons stated in the court decision.



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- A person whose conduct has resulted in disciplinary action under this policy, to the extent of suspension or stronger measures, who requests a letter of reference, must be informed that the disciplinary action will be indicated in the letter of reference. The same applies to ongoing investigations that, on the balance of probabilities will result in suspension or stronger action.
- Knowingly issuing a reference that is incomplete or dishonest is a violation of this policy.

**5.2 RESPONSIBILITIES**

Disagreements over student evaluations, student awards, student placement decisions and normal disciplinary action, including exclusion from co-curricular and extra-curricular activities for cause, do not fall within the scope of this policy and must be addressed with school and district personnel.

**5.2.1 The superintendent shall ensure that:**

- adults whose job or role within the public school system place them in contact with pupils are familiar with and adhere to Policy 701 and the *Child Victims of Abuse and Neglect Protocols*.

**5.2.2 The school principal shall ensure that:**

- staff, students and all persons acting within or for the school are informed about the ethical obligation to report non-professional conduct, as well as the legal obligation to report under section 31.1 of the *Education Act* and subsection 30(1) of the *Family Services Act* as described in the *Child Victims of Abuse and Neglect Protocols*;
- staff, pupils, parents and all persons acting within or for the school are informed about the gravity of making false accusations and the ethical obligation to report cases of false accusation;
- all persons involved in a case are informed of the need to keep the information pertaining to the case confidential; and
- all complaints of abuse and misconduct received at the school level are recorded on a *Policy 701 Complaint Summary Form* (included in Appendix A) and forwarded to the superintendent.

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**5.3 THE COMPLAINT INVESTIGATION PROCESS:  
CATEGORIES I & II - COMPLAINTS CONCERNING ABUSE AND MISCONDUCT RECEIVED AT  
THE SCHOOL LEVEL****5.3.1 Step 1: Receiving a Complaint**

A complaint may be made by any person.

The principal or designate, the superintendent or designate and Director of Human Resources of the Department of Education or designate shall ensure that each complaint received at their respective level in the public education system is pursued in accordance with this policy and a *Policy 701 Complaint Summary Form (Appendix A)* is duly completed. The *Policy 701 Complaint Summary Form (Appendix A)* should be signed by the complainant whenever possible.

When the principal is named as respondent, complaints shall be directed to the superintendent.

Complaints received anonymously shall be acted upon to the extent possible given the amount of information provided. This is consistent with the application of subsection 30(1) of the *Family Services Act*.

If a situation is reportable under section 30(1) of the *Family Services Act*, the first member of the school personnel who is made aware of the complaint shall notify Child Protection Services personally or verify with Child Protection Services that a report was received. The police shall be notified whenever school personnel believe criminal activity may be involved.

In addition, under section 31.1 of the *Education Act*, all school personnel who have reasonable grounds to believe that any member of the school personnel has engaged in non-professional conduct shall report to the superintendent.

**5.3.2 Step 2: Initial Assessment of a Complaint**

The principal shall refer all complaints made under this policy concerning non-professional conduct to the superintendent's office. The superintendent will make an initial assessment of the complaint and will re-direct those which fall outside of the scope of this policy to the principal for resolution.

**5.3.3 Step 3: Superintendent's Decision to Pursue an Investigation**

The superintendent shall:

- determine the type and seriousness of the complaint and determine whether an investigation is necessary;
- assign an investigator/investigation team as quickly as possible, when required;

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- verify that complaints under section 30 of the *Family Services Act* have been reported to Child Protection Services;
- proceed with appropriate action as required by the situation and which may include invoking the normal disciplinary procedure; and
- immediately advise the Director of Human Resources of the Department of Education in writing when the superintendent has decided to launch an investigation.

**5.3.4 Step 4: The Respondent's Rights**

The respondent shall be informed of the complaint at a face-to-face meeting in the workplace as soon as possible. He/she shall also be provided with a written statement of allegations at that time or as soon as possible thereafter, unless school personnel are otherwise directed by the police or Child Protection Services. In the latter case, the respondent shall be advised that an investigation has been launched and that further information will be provided by the police or Child Protection Services, as the case may be. The respondent shall be informed **at the latest** when an investigation is launched under this policy.

The superintendent shall keep the respondent informed of the progress of the investigation.

Prior to the conclusion of the investigation, the respondent shall be afforded an opportunity to respond to the allegations. Every effort will be made to keep the complainant's/pupil's identity confidential. However, in order to adequately address a situation, it may be necessary to release the complainant's/pupil's name to investigators and possibly to the respondent. The complainant's/pupil's identity will not be disclosed when this would foreseeably place the complainant/pupil at risk of harm.

The respondent shall also be informed of his/her right to be accompanied, at any point in the investigation process, by a person of the respondent's choosing, or to have union representation where applicable.

Regardless of the involvement of external agencies, the superintendent shall ensure investigations are concluded in a timely manner. Internal investigations should normally be concluded within three months, taking particular circumstances into account. Where external agencies are involved, the investigation team shall conduct a joint investigation with the external agencies and/or make use of information obtained by external agencies, to the extent possible.

**5.3.5 Step 5: The Investigation Report**

At the conclusion of the investigation, the investigation team shall provide a written report to the superintendent. This report shall describe the investigative procedure used, describe the events in detail, and state whether the complaint was founded,

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unfounded, unsubstantiated or false. This report will include the names of the complainant, if available, and the respondent.

**5.3.6 Step 6: Meeting with the Respondent**

When disciplinary measures are contemplated, the respondent will be given the opportunity to meet with the superintendent or designate. At the respondent's discretion, he/she may be accompanied by a union representative, if applicable. The respondent will have the opportunity to respond to the findings of the investigation.

**5.3.7 Step 7: Communicating the Outcome of an Investigation**

The superintendent shall forward the report and his/her recommendations regarding the disposition of the case to the Director of Human Resources of the Department of Education. In cases where there is to be a resignation or any disciplinary action related to non-professional conduct, this action is subject to approval by the Minister.

The pupil alleged to have been subject to non-professional conduct, his/her parents (if appropriate) and the complainant, where applicable, shall be informed in writing of the following:

- whether the complaint was determined to be founded, unfounded, unsubstantiated or false;
- any action to be taken that pertains to the student, for example, any accommodation that is to be introduced for the benefit of the student; and
- the ethical obligation to keep confidential the information shared.

The respondent shall be notified in writing of the disposition of the complaint and any disciplinary action that is to be noted in the employee file, where applicable.

The information provided to all parties must respect the confidential nature of such cases and the protection provided by sub-section 31.1(9) of the *Education Act* which prohibits revealing the names of school personnel and professional persons who have reported reasonable belief of non-professional conduct.

**5.3.8 Step 8: Support for Victims**

The superintendent shall address counselling support during the period of the investigation and after resolution of the situation for the complainant, other pupils who may have been traumatized and/or the respondent in the case of false allegation.

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**POLICY 701****Page 9 of 15****5.4 SPECIAL CIRCUMSTANCES****5.4.1 Complaint received at the School District Office**

The school district office shall be the point of contact in dealing with complaints against school personnel who are supervised by district office staff and complaints against school principals. Section 5.3 will be followed as appropriate.

**5.4.2 Complaint received at the Department of Education**

Complaints received at the Department of Education, shall be referred to the Human Resources Branch which shall ensure the superintendent is notified. Section 5.3 will be followed by the superintendent, as appropriate.

**5.4.3 Respondent no longer active in the school system or dated complaints**

This section refers to situations where the ability to investigate is limited due to a significant lapse of time or the inability to obtain information from the respondent. In such cases, the superintendent shall consult with Child Protection Services when applicable. If it is likely that the incident involved a breach of the *Criminal Code* in effect at the time, the incident should be referred to the police. As with any other case involving non-professional conduct, the superintendent shall report dated complaints to the Director of Human Resources of the Department of Education.

**5.4.4 Non-professional conduct external to the school system**

Any member of the school personnel who has reasonable grounds to believe that any adult who is in contact with pupils in the public school system has been charged with any violent crime or crime against a child, or who has otherwise engaged in non-professional conduct, shall immediately inform the superintendent of the school district in which the person is active. The superintendent shall inform the Director of Human Resources of the Department of Education.

**5.4.5 Non-professional conduct reported by a professional who is not a member of the school personnel**

As per sub-section 31.1(5) of the *Education Act*, any professional who is not a member of the school personnel shall immediately report to the Minister of Education, the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct. Such reports are to be made to the Director of Human Resources of the Department of Education.

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**5.5 RECORD-KEEPING****5.5.1 At the School:**

Documentation pertaining to any complaint under Policy 701 will be accessible to the principal and his/her designate only. Any other release of information will be done through the superintendent's office. The original *Policy 701 Complaint Summary Form (Appendix A)* completed at the school, shall be maintained in a confidential file at the school until notification of the final outcome of the complaint is received from the superintendent's office. At that time, all documentation pertaining to the complaint shall be forwarded to the superintendent's office and none maintained at the school.

**5.5.2 At the School District Office:**

A copy of every *Policy 701 Complaint Summary (Appendix A)*, investigation report and all other supporting documentation shall be maintained in a confidential file by the Human Resource section at the school district office. Access to these files shall be limited to the superintendent and his/her designate(s).

Disciplinary actions shall be maintained in the employee file as per subsection 31.1(13) of the *Education Act*.

**5.5.3 At the Human Resources Office of the Department of Education:**

A copy of every *Policy 701 Complaint Summary (Appendix A)*, investigation report and all other supporting documentation pertaining to non-professional conduct forwarded to the Director of Human Resources shall be maintained in a confidential file regardless of the outcome of the investigation. This includes records of complaints against persons who are not members of the school personnel and complaints determined to be false allegations. Access to this file is restricted to the Director of Human Resources and his/her designate(s).

**5.6 DISCIPLINARY ACTION**

Judgments concerning the acceptability or classification of a behaviour shall not rest with any one individual but shall be weighed in the light of accepted professional standards.

Disciplinary action will reflect the seriousness of the non-professional conduct and shall take any relevant previous discipline into account. In all instances where an employee has a sexual relationship with a pupil, or sexually abuses a pupil, this shall be cause for dismissal of the employee.

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**5.6.1 False Accusations**

The superintendent shall take action in every case of proven false accusation.

A complaint under this policy that involves falsehood or malicious intent or is otherwise made in bad faith, as determined by the investigation, shall be subject to appropriate disciplinary action up to and including suspension in the case of pupils, dismissal of employees or banning from school premises and possible legal action in the case of parents and volunteers. Disciplinary action taken by the school system does not preclude the respondent from pursuing civil action.

**6.0 GUIDELINES / RECOMMENDATIONS**

**NOTE: This section provides guidance for addressing conduct which is undesirable but is not reportable as an infraction under Policy 701.**

**6.1 GUIDELINES FOR ADDRESSING INAPPROPRIATE BEHAVIOUR MANAGEMENT**

*Inappropriate Behaviour Management* refers to an approach to dealing with pupils that is counterproductive to learning and/or maintaining a positive learning environment in the school, as defined in Policy 703 – *Positive Learning Environment*. It reflects poor judgment or limited behaviour management skills. It is not abuse or misconduct as defined by this policy. It must be treated by supervisors as any personnel issue which requires supervision.

**Examples of Inappropriate Behaviour Management**

- personal attacks on pupils' characters rather than dealing with their behaviour;
- continuous use of sarcasm;
- undue, non-constructive criticism in dealing with pupils; and
- habitual uncontrolled temper.

**6.1.1 Responsibilities of the Superintendent**

The supervisor of the person against whom such a complaint is lodged is accountable for ensuring it is appropriately identified, monitored, resolved and documented. Reporting criteria will be determined by superintendents. In addition, it is the supervisor's role to be aware of potential areas of weakness and act proactively, ensuring inappropriate behaviour management is addressed. Additional training and monitoring may be required to assist the employee in improving interpersonal or management skills.

**6.1.2 Responsibilities of the Principal**

Once the principal has determined that an action falls into the realm of inappropriate behaviour management, the principal will:

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- inquire as to whether the complaint was directed to the person(s) involved and encourage this to be done;
- attempt to establish communication among parents, staff and pupils involved to resolve the issue at the school level if possible; and
- to guide, monitor (and inform the superintendent if necessary) when inappropriate behaviour management is identified.

**6.1.3 Reporting Procedures**

**Step 1:** Complaints involving inappropriate behaviour management must be dealt with initially at the school level. Persons having a complaint which does not involve abuse or misconduct are encouraged to communicate their concerns directly to those involved. If the outcome is unsatisfactory, the complaint should be directed to the principal or vice-principal.

**Step 2:** Situations that are not satisfactorily resolved at the school level may be forwarded to the superintendent by the complainant or school administrators. However, prior to intervening in such situations, district staff shall request that complaints are brought to the attention of the school administration. Likewise, Department of Education staff receiving such complaints shall verify that school and district staff have been involved in the complaint process.

Documentation of complaints of inappropriate behaviour management should follow normal human resources practices.

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**7.0 DISTRICT EDUCATION COUNCIL POLICY-MAKING**


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District Education Councils may establish policy, within the parameters of this policy and the *Education Act*.

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**8.0 LEGAL AUTHORITY**


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*Education Act*

6(a) The Minister shall establish educational goals and standards and service goals and standards

Mandatory reporting of non-professional conduct

31.1(1) In this section

"administrative proceedings" includes hearings before an adjudicator under the *Public Service Labour Relations Act* and hearings before the Appeal Board;

"professional person" means a professional person as defined in subsection 30(10) of the *Family Services Act*.



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31.1(3) A superintendent shall report to the Minister the name of any teacher or other member of the school personnel who

- (a) has been convicted of an indictable offence under the *Criminal Code* (Canada),
- (b) in the case of a teacher, the superintendent has reasonable grounds to believe has committed an act which may be grounds for the suspension or revocation of the teacher's certificate, or
- (c) is investigated, is disciplined or resigns because of non-professional conduct or alleged non-professional conduct.

31.1(4) A member of the school personnel shall immediately report to the superintendent concerned the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(5) A professional person who is not a member of the school personnel shall immediately report to the Minister the name of any member of the school personnel who he or she has reasonable grounds to believe has engaged in non-professional conduct.

31.1(6) This section applies notwithstanding that the person has acquired the information through the discharge of his or her duties or within a confidential relationship.

31.1(7) A person who fails to comply with subsection (3), (4) or (5) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category F offence.

31.1(8) No action lies for damages or otherwise against a person in relation to anything done or purported to be done in good faith, or in relation to anything omitted to be done in good faith, in the execution or intended execution of the duty to report under this section.

31.1(9) Except in the course of judicial or administrative proceedings, no person shall reveal the identity of a person who has given information under this section without that person's written consent.

31.1(10) A person who violates subsection (9) commits an offence punishable under Part II of the *Provincial Offences Procedure Act* as a category H offence.

31.1(11) Any agreement respecting a resignation of a member of the school personnel in relation to non-professional conduct or any disciplinary action to be taken against a member of the school personnel in relation to non-professional conduct is subject to the prior approval of the Minister.

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31.1(12) The Minister may take such action as the Minister considers appropriate if, in the opinion of the Minister, a matter reported to the Minister under this section

- (a) has been inadequately investigated, or
- (b) may result in an inappropriate agreement respecting a resignation of a member of the school personnel or in inappropriate disciplinary action against a member of the school personnel.

31.1(13) Notwithstanding any provision in any collective agreement under the Public Service Labour Relations Act, any information maintained in the file of a member of the school personnel with respect to a resignation or a disciplinary action taken in relation to non-professional conduct shall not be removed.

Family Services Act

30(1) Any person who has information causing him/her to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused shall inform the Minister (of Family and Community Services; read Child Protection Services) of the situation without delay.

30(3) A professional person who acquires information in the discharge of the professional person's responsibilities that reasonably ought to cause the professional person to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused but who does not inform the Minister of the situation without delay commits an offence.

30(10) For the purposes of this section "professional person" means a physician, nurse, dentist or other health or mental health professional, an administrator of a hospital facility, a school principal, school teacher or other teaching professional, a social work administrator, social worker or other social service professional, a child care worker in any day care center or child caring institution, a police or law enforcement officer, a psychologist, a guidance counsellor, or a recreational services administrator or worker, and includes any other person who by virtue of his employment or occupation has a responsibility to discharge a duty of care towards a child.

31(1) The security or development of a child may be in danger when

- (a) the child is without adequate care, supervision or control;
- (b) the child is living in unfit or improper circumstances;
- (c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;
- (d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;

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- (e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;
- (f) the child is living in a situation where there is domestic violence;
- (g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;
- (h) the child is beyond the control of the person caring for him;
- (i) the child by his behaviour, condition, environment or association, is likely to injure himself or others;
- (j) the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;
- (k) the child is in the care of a person who neglects or refuses to ensure that the child attends school; or
- (l) the child has committed an offence or, if the child is under the age of twelve years, has committed an act or omission that would constitute an offence for which the child could be convicted if the child were twelve years of age or older.

**9.0 REFERENCES**

Appendix A – Policy 701 Complaint Summary Form  
Canadian Charter of Rights and Freedoms  
Child Victims of Abuse and Neglect Protocols  
Criminal Code  
Education Act  
Family Services Act  
New Brunswick Age of Majority Act  
New Brunswick Human Rights Act  
Policy 703 – Positive Learning Environment  
Provincial Offences Procedure Act  
Public Service Labour Relations Act

**10.0 CONTACTS FOR MORE INFORMATION**

Human Resources – (506) 444-4914

Policy and Planning – (506) 453-3090

# Policy 701 Complaint Summary

to be used for complaints of non-professional conduct

Page 1 of 2  
revised 2004-09-07

**Section I: Notification of Complaint**

Complaint made by: \_\_\_\_\_ Pupil [ ]  
 (print person's name) Teacher [ ]  
 School Administrator [ ]  
 Phone No. of Complainant: \_\_\_\_\_ District Administrator [ ]  
 Parent/Guardian [ ]  
 DOE Staff [ ]  
 Other person \_\_\_\_\_ [ ]  
 (title or relation to pupil)

**Section II: Identity of pupil believed to be subjected to non-professional conduct**

Pupil: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 name(s) Year Month Day  
 School: \_\_\_\_\_ District: \_\_\_\_\_  
 Parent/Guardian: \_\_\_\_\_ Phone No. \_\_\_\_\_ (H)  
 \_\_\_\_\_ (W)

OR

Not applicable (e.g. non-professional conduct does not involve a pupil)

**Section III: Identity of Respondent**

Respondent: \_\_\_\_\_ Job Title: \_\_\_\_\_  
 Person against whom allegation was made  
 Work Location: \_\_\_\_\_ District: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_ (H)  
 \_\_\_\_\_ (W)

**Section IV: Description of Events (attach sheet if necessary)**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Section V: Signatures**

\_\_\_\_\_  
 Complainant / Person making the complaint Date: \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of school official receiving the complaint Date: \_\_\_\_\_

Note: Every effort will be made to keep the complainant's/pupil's identity confidential. However, the steps needed to resolve this situation may require the release of the complainant's/pupil's name to investigators and possibly the respondent.

PART A

**PART B – For office use only**

**Section VI: Reporting to FCS/Police**

Has this complaint been reported to:

**Child Protection Services?**  No  Yes

Date reported (Yr./Mo./Day) \_\_\_\_\_ Time: \_\_\_\_\_

Name of person who reported \_\_\_\_\_

Name of FCS official who received the report \_\_\_\_\_

**Police or RCMP?**  No  Yes

Date reported (Yr./Mo./Day) \_\_\_\_\_ Time: \_\_\_\_\_

Name of person who reported \_\_\_\_\_

Name of police official who received the report \_\_\_\_\_

**Section VII: Communication Summary**

Who was the first person in the school system to receive the complaint (or witness the situation) and when?

Position: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_  
(Yr./Mo./Day)

Who completed Part A of the Complaint Summary?

Position: \_\_\_\_\_ Name: \_\_\_\_\_ Date: see Part A  
(Yr./Mo./Day)

To whom was the Complaint Summary forwarded?

Position: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_  
(Yr./Mo./Day)

When was a copy of this complaint summary sent to the superintendent's office? Date: \_\_\_\_\_  
(Yr./Mo./Day)

**Section VIII: Immediate Action Taken**

Have the parents of the complainant been notified?  No  Yes

If not, why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have measures been taken to minimize the contact between the complainant and respondent?

No  Yes

Describe arrangement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is there any other information you can provide concerning this incident?

Please specify: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has the respondent been notified of the complaint?  No  Yes Date: \_\_\_\_\_

**In accordance with Policy 701, the original Complaint Summary and any relevant documentation is to be forwarded to the superintendent's office after notification of the final outcome of the complaint is received from the superintendent's office.**

**PART B**