

Client confidentiality and record-keeping



Protecting a minor from harm

This information is not legal advice. The facts of every situation are different. If you have questions about a specific situation or circumstance, contact a lawyer.

- Generally speaking, there is **no obligation under Canadian criminal law to report a crime to the police** or provide the police with information about a client, unless such a requirement is set out in a search warrant. (For more information on search warrants and subpoenas, see “Responding to a search warrant” and “Responding to a subpoena,” both in this section of this resource kit.)
- However, if a service provider has reason to believe that a **child is (or might be) in need of protection**, provincial/territorial laws usually have **explicit obligations** to report these concerns to **child protection authorities** (and/or any other authority designated by the legislation), even if that requires breaching confidentiality (except in a client–solicitor relationship).¹
- Provincial/territorial laws usually **protect the informant against lawsuits** if such a report was made in good faith and in compliance with the legislation.² They also usually provide that **failure to report** a child in need of protection constitutes an **offence**.³
- The obligation to report usually applies to **anyone** who believes a child is in need of protection. But provincial/territorial legislations may also create specific obligations for certain professionals, such as child care workers, teachers and

¹ See, e.g., British Columbia’s *Child Family and Community Services Act*, RSBC 1996, c 46, section 14: “A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

(2) Subsection (1) applies even if the information on which the belief is based (a) is privileged, except as a result of a solicitor-client relationship, or (b) is confidential and its disclosure is prohibited under another Act.”

² See, e.g., Manitoba’s *Child and Family Services Act*, C.C.S.M. c. C80, section 18.1(1): “no action lies against a person for providing information in good faith and in compliance with section 18.”

³ See, e.g., Alberta’s *Child Youth and Family Enhancement Act*, RSA 2000, c C-12, section 4 (6): “any person who fails to comply with subsection (1) is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.”

health-care providers.⁴ Regulated professionals should also be aware of any legal or ethical duty to report that may exist in acts and regulations that govern their profession.

- Depending on the province or territory, reporting obligations may apply to children and youth **under the age of 16 or under the age of 18 years**, and to older **children with disabilities**.
- **The notion of a child in need of protection may vary from one province/territory to another.** It might be defined very broadly (for instance, in Manitoba, a child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person), or it might focus on abuses or neglect caused by the person in charge of the child (e.g., the parents), or situations where the person in charge of the child is unable or unwilling to provide adequate protection to the child.⁵ Some legislation also refers to situations where a child has serious behavioural disturbances.⁶
- The definition of a child in need of protection in a provincial legislation might not necessarily easily apply to situations that service providers may encounter in the context of HIV criminalization (e.g., where a service provider has good reason to

⁴ See, e.g., Nova Scotia's *Children and Family Services Act*, SNS 1990, c 5, section 24(2):

“Notwithstanding any other Act, every person who performs professional or official duties with respect to a child, including (a) a health care professional, including a physician, nurse, dentist, pharmacist or psychologist; (b) a teacher, school principal, social worker, family counsellor, member of the clergy, operator or employee of a day-care facility;

(c) a peace officer or a medical examiner; (d) an operator or employee of a child-caring facility or child-care service;

(e) a youth or recreation worker, who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information upon which it is based to an agency.”

⁵ See, e.g., British Columbia's *Child Family and Community Services Act*, RSBC 1996, c 46, section 13:

“(1) A child needs protection in the following circumstances: (a) if the child has been, or is likely to be, physically harmed by the child's parent; (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent; (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child; (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent; (e) if the child is emotionally harmed by the parent's conduct; (f) if the child is deprived of necessary health care; (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment; (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care; (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being; (j) if the child's parent is dead and adequate provision has not been made for the child's care; (k) if the child has been abandoned and adequate provision has not been made for the child's care; (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.”

⁶ See, e.g., Quebec's *Youth Protection Act*, section 38 (f): “‘serious behavioural disturbance’ refers to a situation in which a child behaves in such a way as to repeatedly or seriously undermine the child's or others' physical or psychological integrity, and the child's parents fail to take the necessary steps to put an end to the situation or, if the child is 14 or over, the child objects to such steps.”

believe that a teenager is having sex with another teenager who did not disclose his/her HIV-positive status). In the absence of explicit legislation, it will be up to the organization to decide what the best approach might be, depending on the circumstances. The organization should consider contacting the child protection authorities to seek assistance, or the child's parents, if appropriate. If service providers have concerns about their legal obligations to report, they and their organization should seek legal advice.

For more information on the duty to report a child in need of protection, **check the website of your provincial/territorial government** and the **applicable legislation**:

Alberta:

<http://www.child.alberta.ca/home/589.cfm>

Child Youth and Family Enhancement Act, RSA 2000, c C-12

British Columbia:

http://www.mcf.gov.bc.ca/child_protection/index.htm

Child, Family, and Community Service Act, RSBC 1996, c 46

Manitoba:

http://www.gov.mb.ca/fs/childfam/child_protection.html

Child and Family Services Act, CCSM, c. C80

Ontario:

<http://www.children.gov.on.ca/htdocs/English/topics/childrensaidd/reportingabuse/abuseandneglect/abuseandneglect.aspx>

Child and Family Services Act, RSO 1990, c C.11

Justice For Children and Youth (JFCY) can also provide information. JFCY is a legal clinic which gives legal advice, information and assistance to young people, parents (in education matters), professionals and community groups across Ontario.

Telephone: +1 416 920-1633

Ontario toll-free: +1 866 999-JFCY (5329)

E-mail: info@jfcy.org

New Brunswick:

http://www2.gnb.ca/content/gnb/en/services/services_renderer.9355.html#serviceDescription

Family Services Act, SNB 1980, c F-2.2

Newfoundland and Labrador:

<http://www.gov.nl.ca/cyfs/childprotection.html>

Children and Youth Care and Protection Act, SNL 2010, c C-12.2

Northwest Territories:

<http://www.hlthss.gov.nt.ca/>

Child and Family Services Act, SNWT 1997, c 13

Nova Scotia:

<http://novascotia.ca/coms/families/abuse/index.html>

Children and Family Services Act, SNS 1990, c 5

Nunavut:

<http://www.hss.gov.nu.ca/en/CFS%20Child%20Protection.aspx>

Child and Family Services Act, SNWT (Nu) 1997, c 13

Prince Edward Island:

<http://www.gov.pe.ca/sss/index.php3?number=20669&lang=E>

Child Protection Act, RSPEI 1988, c C-5.1

Saskatchewan:

<http://www.socialservices.gov.sk.ca/child-protection/>

Child and Family Services Act, SS 1989-90, c C-7.2

Quebec

<http://www.acjq.qc.ca>

Youth Protection Act, RSQ, c P-34.1

Yukon

<http://www.hss.gov.yk.ca/childprotection.php>

Child and Family Services Act, SY 2008, c 1

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