

## **THOUGHTS ON CHILD PROTECTION POLICIES: HOW TO MAKE THEM WORK FOR YOUR CHURCH OR CHARITY**

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### **A. INTRODUCTION**

Every organization hopes that it will never have to encounter any incidents of child abuse that have occurred through one of its programs. However, due to developing case law, as well as a number of tragic, high-profile incidents of child abuse that were committed at church and/or charitable institutions, child protection issues are now of a primary concern within the charitable and non-profit sectors. For these reasons, all churches, charities, and non-profit organizations that carry out programs involving children or youth should give serious consideration to implementation of a child protection policy, if they have not yet done so.

This *Church Law Bulletin* begins with some general comments concerning why churches and charities should implement child protection procedures, as well as an overview of the legislation that applies to organizations operating in the Province of Ontario, followed by a checklist of issues to be considered in developing a child protection policy. Please note that this *Bulletin* provides general guidelines and principles to be considered in establishing internal policies to protect children from abuse and the comments contained in this *Bulletin* are not intended to serve as legal advice. Any specific questions that may arise on this topic should be reviewed with the assistance of legal counsel in order to ensure that any given concern is properly addressed in accordance with legal requirements.

## **B. OVERVIEW COMMENTS ON WHY CHURCHES AND CHARITIES SHOULD IMPLEMENT CHILD PROTECTION PROCEDURES**

Churches and charities that carry out programs involving children or youth are recommended to implement a child protection policy for a number of reasons. At an initial level, comprehensive screening procedures can help to identify those individuals who may not be well-suited to work with children, including those individuals with criminal records involving past abuses or violent crimes. At a secondary level, child protection policies that are implemented within the operations of an organization can help to reduce the likelihood of abuse occurring through their programs. For example, the “two-person rule”, typically included in child protection policies, requires that two adult volunteers or employees must always be together in the presence of any children and can help to reduce the risk of child molestation occurring, since such incidents are normally committed in private.

Child protection policies also serve to protect the reputation and integrity of volunteers and employees of an organization. In the event that a child makes a false allegation of sexual abuse against an adult volunteer or employee, due to the application of “two-person rule”, another adult witness will always have been present to verify what had happened. A third reason to implement a child protection policy is to ensure that the organization has clear behavioural and reporting guidelines and standards for volunteers and employees to follow in order to ensure compliance with legal reporting requirements. In this regard, it is recommended that any child protection policy prepared on behalf of an organization should be reviewed by legal counsel to ensure that the policy complies with applicable laws.

Fourthly, implementation of a child protection policy can help to reduce the exposure of churches and charities from potential legal liability arising from claims involving allegations of the sexual abuse of children. Having a child protection policy cannot prevent a third party victim from taking steps to commence a lawsuit against an organization, as there is no way to guarantee that the organization would not be exposed to the possibility of a legal action. However, having a child protection policy can help to reduce the possibility that incidences of child abuse may occur through the implementation of checks and balances within the operations of the organization, as described later in this *Bulletin*. In this regard, a child protection policy could serve as evidence of the church or charity taking due diligence steps to protect its children and would thereby assist in defending against any legal claims, should they arise.

Moreover, many insurance companies now require churches and charities to adopt a child protection policy as a prerequisite to providing relevant insurance coverage. Although it can be difficult to obtain insurance coverage for claims involving sexual abuse, where it is possible to do so, churches and charities should strongly consider purchasing such additional coverage.

### C. OVERVIEW OF APPLICABLE LEGISLATION

Each province has a statute that establishes a provincial regime to assist children who are vulnerable to abuse. In Ontario, the governing statute is the *Child and Family Services Act* (Ontario) (“CFSA”). The CFSA in Ontario primarily addresses issues involving children who have experienced abuse or may be vulnerable to abuse. In addition, the *Criminal Code* (Canada) outlines a number of offences where an adult is involved with sexual activities with children, including the offence of sexual exploitation of a child, as described below.

This *Bulletin* does not provide a detailed commentary on the relevant provisions of the CFSA or the *Criminal Code* and instead provides a synopsis of some of the key offences involving child abuse under those statutes, together with a brief review of the applicable reporting requirements that would be of interest to churches or charities.

#### 1. *Child and Family Services Act* (Ontario) (“CFSA”)

Under Part III of the CFSA in Ontario, a “child” is a generally defined as a person under the age of 16 years, unless a person is between the ages of 16 to 18 and is subject to a protective order under the CFSA. The CFSA contains an expansive description of what can constitute the abuse of a child, which can include physical abuse, sexual abuse, neglect/failure to provide for the basic needs of a child or emotional maltreatment. Moreover, the CFSA states that any person who has reasonable grounds to suspect that a child is or may be in need of protection from abuse has a duty to report the suspicion and the information on which it is based to the applicable Children’s Aid Society (“CAS”). This duty is an on-going one that may require further reports if a person has reasonable grounds to suspect further abuse. Those reports must be made directly to the CAS and the person should not rely on another to make the report on his/her behalf. Any person who performs professional or official duties with respect to children (including health care professionals, teachers, and religious officials, such as members of the clergy) who fails to report suspected child abuse can be found guilty of an offence under the CFSA,

where the suspicions were based on information obtained in the course of his or her professional or official duties.

2. *Criminal Code (Canada)* (“Code”)

A number of amendments to the *Criminal Code* were assented to on February 28, 2008 through the enactment of the *Tackling Violent Crime Act*. While there are several offences that now apply where an adult is involved with sexual activities with children, of interest from the perspective of child protection in the church or charity context are the following:

- The age of consent required for sexual activities with an adult was raised from 14 to 16 years of age; and
- The Code provided for inclusion of a new criminal offence involving “sexual exploitation” of a child.

Under the new provision, a person is guilty of the offence of “sexual exploitation” where the perpetrator engaged in sexual activities with a person aged 16 years or more (but under 18 years of age), and the perpetrator is in a relationship of trust or authority vis-à-vis the victim. In other words, where a “relationship of trust or authority” exists between a young person (aged 16 or 17) and an adult with whom the child has a “relationship of trust”, there can be no legal consent to sexual activity between the two individuals.

Generally speaking, where volunteers or employees serve in a leadership position for youth programs held at a church, mosque, synagogue or other charity, those volunteers or employees would likely be considered to be in a relationship of trust vis-à-vis the youth attending the programs. In light of the above, volunteers or employees participating as leaders in youth programs generally cannot become involved in a sexual relationship with a child under 18, as it would be a criminal offence to do so.

#### D. CHECKLIST OF ISSUES FOR A CHILD PROTECTION POLICY

It is important that a child protection policy reflect adherence to applicable statutory definitions and legal reporting requirements. As indicated earlier in this *Bulletin*, different provincial reporting requirements apply under the applicable legislation. Accordingly, any church or charity that carries out children's programs across Canada will need to keep in mind that each province has different reporting and compliance requirements.

The following is a checklist of issues to take into consideration when a church or charity is developing a child protection policy. However, as child protection entails an evolving area of law, the items listed within the following checklist may be subject to modification in the future as further developments arise in this area of law.

##### 1. Procedural Matters

With respect to procedural matters, the following issues should be reviewed.

- a) Has the policy received proper corporate approvals?
  - Board and/or membership approval may be required subject to the requirements outlined in the general operating by-law for an organization.
- b) Has the policy been dated?
  - This would be relevant in monitoring updates that may be required to the policy.

##### 2. Preliminary Matters

With respect to the introductory portions of the child protection policy, the following issues should be considered.

- a) Does the policy have a purpose statement confirming the church or charity's position on the value of children, underscoring the dignity and worth of all children and further confirming that the abuse of children and/or sexual exploitation will not be tolerated whatsoever?

- This purpose statement can cross-reference back to the religious or other charitable objects of the church or charity.
- b) Does the policy contain a statement indicating that any findings and/or suspicions of child abuse and/or sexual exploitation will be addressed swiftly in accordance with the policy?
- c) Does the policy contain a statement indicating that the measures outlined in the policy are in place for the protection of the reputation of volunteers and employees involved with programs with children?
- d) Does the policy have a definition section for key terms used throughout the policy, including but not limited to the following:
  - Definition of Children (with age references included);
  - Explanation of what constitutes Child Abuse, Neglect and Sexual Exploitation;
  - Definition of Parents; and
  - Definitions for other key terms that are defined in such a manner that is consistent with the appropriate legislation.

### 3. Implementation, Monitoring and Review of the Policy

It is important that churches and charities monitor and consistently enforce the child protection policy it adopts. The following related issues should also be reviewed and monitored.

- a) Does the policy clearly indicate who, within the church or charity, will be responsible for implementing, monitoring and reviewing the policy on an on-going basis?
- b) The policy should be reviewed and updated on a regular basis, at least every 2-3 years to help ensure consistency with legal developments and changes in the church or charity's operations.
- c) Does the policy indicate that the policy must be followed in all activities and programs of the church or charity where children are present?

- For example, a number of churches hold programs, such as small group and/or house church meetings that occur outside of the church premises but are organized and authorized by the church. It is important to ensure that child protection measures apply to those programs as well.

#### 4. Child Security Procedures

A number of child safety measures can be reviewed, including those listed below.

- a) Does the policy outline secure procedures to be followed for the drop-off and pick-up of young children, particularly nursery school children?
- b) While the following suggested checklist of items does not necessarily involve protection of children from abuse or exploitation, it can be helpful to include the following into policies:
  - Fire safety procedures outlining exit procedures in the event of a fire;
  - Emergency preparedness procedures outlining safety procedures to follow where a security issue arises;
  - Guidelines concerning snacks to be provided during break times, with consideration to food allergies that some children may experience;
  - Health and safety guidelines, such as a policy that children who are ill will not be accepted into the church or charity's program for the protection of other children; and
  - A policy prohibiting the administration of medication by volunteers and employees except in limited emergency situations.

#### 5. Reporting Requirements under the Policy

With respect to reporting requirements, the following key issues should be reviewed.

- a) Does the policy set out a clear procedure to be followed where a volunteer or employee has reasonable grounds to suspect abuse? (In Ontario, the reporting procedures must be consistent with the CFSA.)

- Many churches err on this matter by implementing policies which state that incidents of suspected or actual child abuse must first be reported to a pastor or other church leader, before the child protection authorities are alerted.
  - The CFSA states that any person who has reasonable grounds to suspect that a child is or may be in need of protection from abuse has a duty to report the suspicion directly to the CAS and the person should not rely on another to make the report on his/her behalf.
  - In addition, the CFSA expressly provides that persons who perform professional or official duties respecting children including a teacher or a religious official, will be guilty of an offence if (s)he fails to report suspicions of Child Abuse and can be fined \$1,000 upon conviction.
- b) Does the policy provide a general summary of the information to be reported to the CAS when a volunteer or employee has reasonable grounds to suspect child abuse?
- c) Does the policy have a form to be filled out by persons making reports to the CAS, for the church or charity's internal records?
- While this requirement is not necessarily prescribed by the CFSA, it would be helpful for a church or charity to maintain records regarding developments that have occurred for the protection of the church or charity and its volunteers and employees.
- d) Are volunteers and employees who report suspected abuse provided with assurances of confidentiality?
- e) Does the policy outline a clear internal procedure to be followed in investigating allegations of abuse?
- Such internal procedures would not replace reporting requirements owed to the government child welfare authorities and instead would be followed after the necessary reports have been made to the authorities.
- f) Does the policy contain procedures to provide follow-up with a complainant and/or authorities following investigation of an incident of alleged abuse?



g) Does the policy identify potential remedies and sanctions that may follow a report of suspected child abuse?

- In some cases, the accused perpetrator may be suspended and/or removed from the church or charity's premises until the investigation has been completed. In addition, an employee charged with overseeing programs with children who is convicted of abuse may be suspended and/or terminated as an employee.

#### 6. Screening Procedures for Volunteers and Employees

Screening procedures can be helpful in identifying prospective volunteers and employees who may have past criminal records. In this regard, a criminal background record check is a good first step as part of a more comprehensive screening procedure for volunteers and employees who wish to work in a church or charity children's program. However, a criminal records check should not be relied upon as the sole basis for screening a volunteer or employee.

Criminal records checks alone are an inadequate method for screening prospective volunteers and employees to work with children, for the reasons listed below.

- Information available through the Canadian Police Information Centre ("CPIC") is often up to 12 months behind due to the backlog in the processing of criminal convictions. Accordingly, any information obtained through a criminal records background check would not necessarily reflect the most current information as of the date of the search, as the information retrieved may reflect data that was incurred up to 12 months prior.
- Information available through CPIC is not always comprehensive in nature, as it may not include recognizances, formerly known as "peace bonds", where an individual may not have been convicted or found guilty of a crime but the court had issued a recognizance against him or her requiring that (s)he "keep the peace" and conduct himself accordingly.
- Criminal records checks are not always 100% accurate and it is not uncommon for such records to contain clerical errors and/or omissions.

- Not all perpetrators of child abuse have a past criminal record and a number of incidents surrounding child abuse have involved first-time abusers.

**For the reasons set out above, it is important that criminal record checks should be combined with other screening methods used by a church or charity in selecting candidates to work with children.**

In this regard, volunteer/employee applications procedures should reflect standardized processes which at a minimum should include the following:

- Usage of standard forms that are completed by all applicants who wish to work with children;
- Criminal record background checks;
- Minimum of three (3) character references;
- An interview process; and
- Such other measures that should also be included in a child protection policy.

It is important that the entire process be followed in screening all volunteer and employee applications in assessing a candidate's suitability to work with children, in order to ensure that all applicants are treated in an objective manner. Otherwise the church or charity could become vulnerable to allegations of discrimination or partiality.

#### 7. Training and Guidelines for Programs with Children

The following issues should be considered in relation to the training of volunteers and employees, together with some related guidelines that apply to programs involving children.

- a) Does the policy provide for orientation and on-going training for volunteers and employees to help them recognize, report, and follow up with issues involving the abuse, neglect and/or exploitation of children?
- b) Does the policy provide clear practical examples of acceptable and unacceptable conduct that is age-appropriate for children?

- For example, while picking up a young toddler who is crying may be appropriate to comfort a young child in nursery school, it would not necessarily be appropriate to physically pick up a child of junior high school age.
- c) Does the policy provide for implementation of the two-person rule, i.e. that a minimum of two adult volunteers or employees must be present together at all times in all activities involving children?
- d) Does the policy require church or charity approval and parental approval for overnight stays and other outings?
- Where a church or charity has a special event, such as a field trip, a mission trip or any other special event, churches and charities are recommended to have the parents/legal guardians for the children sign a permission form together with a release and indemnity. Additional precautions and approvals may be required for other special events.
- e) Does the policy reflect the requirement for a six month rule?
- This rule generally requires that a volunteer or employee must have attended the church or charity for a minimum of 6 months prior to being allowed to work with children.
- f) Does the policy require a signed acknowledgement from each volunteer or employee confirming that the volunteer/employee has received and reviewed a copy of the policy and has agreed to comply with it?
- A signed copy of the acknowledgement and all other forms should be kept in a secure place within the church or charity's records for safe-keeping.
- g) Does the policy have attached as schedules information forms to be filled out by volunteers and employees where a report or a complaint of child abuse has been made?
- h) Does the policy stipulate that upon learning of an allegation of abuse, the church or charity must also contact its insurers?

As child protection issues entail an evolving area of law, there are a number of other areas of risk that will need to be properly identified and addressed in the future including, but not limited to, the following:

- Usage of the internet and online community forums, such as Facebook, MSN, chat-rooms and other forms of telecommunications within the church or charity's programs;
- Issues involving cyber bullying and how to address such risks; and
- As technology continues to develop, it is likely that other issues will also be identified.

## E. CONCLUDING COMMENTS

In conclusion, having a child protection policy can help to protect children from potential abuse and can also protect volunteers and employees from false allegations of abuse through the implementation of checks and balances within the operations of an organization as described in this *Bulletin*. The implementation of a child protection policy will not guarantee that an organization would not be exposed to the possibility of a lawsuit if an incident of child abuse were to arise. However, the adoption and consistent enforcement of a child protection policy can help to reduce potential liability to an organization by serving as evidence of due diligence steps taken by the church or charity to protect its children and youth and would thereby assist in defending against any legal claims should they arise.