

2 MODULE

Summary

THE LAW AND CHILD SEXUAL ABUSE

Subject	A primer on legal issues related to child sexual abuse and sport organizations.
Prerequisites	Module 1: Facing and Addressing Child Sexual Abuse.
Target Audience	Board, Executive, Administrators, Coaches, Managers, Leaders, Parents, Older Players or Participants.
Aim	Following the prerequisite module “Facing and Addressing Child Sexual Abuse,” this session will provide participants with a basic understanding of pertinent laws, including the <i>Child and Family Services Act</i> , and the duty to report child abuse or neglect.
Desired Outcome	Participants will have a clear, if rudimentary understanding of the law and the legal obligations of the organization and of individuals within the organization with respect to child sexual abuse. Participants will understand the nature of the steps that these legal obligations require individuals and the organization to take.
Time	One and one-half hours minimum.
Opportunity/Setting	At a regular board meeting, at a specially called meeting, as part of orientation and training of board, executive, administrators, managers, coaches, leaders, parent reps
Group Size	Six to 25.
Method	<ul style="list-style-type: none">• Facilitator’s Welcome, Introductions• Lecture/Discussion on <i>Child and Family Services Act</i> and the duty to report• Lecture/Discussion on <i>Criminal Code of Canada</i> and sexual assault offences, prohibition orders• Lecture/Discussion on the common law• Lecture on concept of risk management as method of fulfilling duty of care• Lecture on Incorporated vs. Non-incorporated orgs.• Throughout – discussion of specific questions, concerns re legal issues that need response, clarification
Training Aids	Flipchart or blackboard. Prepared Overheads/Handouts
Facilitator Preparation	Familiarity with <i>Making It SafeR</i> , Sections I through IV, at a bare minimum Assistance from lawyer, children’s aid society worker, and/or police officer would be useful if possible.
Legend of acronyms used	PS: participants HO: handout MIS: Making It Safer (reference to resources) CFSA: <i>Child and Family Services Act</i> . CC: <i>Criminal Code</i> .
Handouts	Handouts provide the facilitator with supplementary speaking notes.

2 MODULE Lesson Outline: Speaking Notes

THE LAW AND CHILD SEXUAL ABUSE

Note: Instructions to facilitators are *italicized*.

Facilitator Welcomes Everyone. Introductions are made if necessary.

TIME	SPEAKING NOTES	CUES
5 MINS	<p>INTRODUCTION</p> <p>We know, without being told, that the sexual abuse of children is against the “law.” We understand that it is a violation and that children are entitled to be protected against it.</p> <p>However, sport organizations should know more than this. They should be aware of the specific laws relevant to child sexual abuse, some of which impose certain obligations on organizations with respect to the children in their care. And the leaders of sport organizations – in particular, their Boards or Executives – are specifically required to take action to protect from harm the children in their care.</p> <p>During this session, we’ll look at the basic legal issues and the most important laws related to child sexual abuse. These legal issues are very complex, and no one will be, nor could be expected to be, an expert at the end of a two-hour training session. However, by the end of this session, the most important legal issues should be relatively clear, so that organizations’ leaders can use that knowledge in developing abuse prevention measures.</p> <p>Organizations are always advised to seek the advice of a competent lawyer, one who is knowledgeable about this area of the law, for help on specific or detailed legal questions.</p>	
30 MINS	<p>DEVELOPMENT</p> <p>The Law and Child Sexual Abuse</p> <p><i>Reassure participants again that it will take some time to become familiar with this material, and that no one is expected to be an expert on it. If it is possible, it may be a good idea to break into small groups, so that at the end of each section, the PS can talk to one another about the issues raised, and then identify issues or questions that need clarification or response. The Facilitator should not try to respond or offer advice or information beyond the scope of his or her knowledge.</i></p>	

The Ontario *Child and Family Services Act (CFSA)*

The CFSA is a provincial law that provides for a broad range of services for families and children, including children who are or may be in need of protection. A paramount objective of the Act is to promote the best interests, protection and well being of children. The most important elements for sport organizations are discussed below.

The CFSA makes it an offence for a person having charge of a child to physically harm, sexually molest or sexually exploit a child, or permit the child to suffer such harm by failing to care and provide for or supervise or protect the child adequately. Anyone convicted of these offences may be fined up to \$2,000, or imprisoned for up to two years, or both. A director, officer, or employee of a corporation, including a non-profit corporation, who authorizes, permits, or concurs in the abuse of a child by the corporation, is liable to the same penalties.

HO 2.1

Duty to report

The CFSA also imposes a duty to report harm or the risk of harm to a child. Members of the public, including people who perform professional or official duties with respect to children, have an obligation to report promptly to a children's aid society if they suspect that a child is or may be in need of protection. The suspicion and the information upon which it is based must be reported.

HO 2.2

Some of the situations in which a child is said to be "in need of protection" are also categorized as "abuse." One situation where a child is said to suffer abuse is where the child has been sexually molested or sexually exploited by the person having charge of the child.

The Act recognizes that people working with children have a special awareness of the signs of child abuse and neglect, and a particular responsibility to report their suspicions, and so makes their failure to report an offence. Any professional or official who fails to report a suspicion that a child is or may be in need of protection, where the information on which that suspicion is based was obtained in the course of his or her professional or official duties, is liable on conviction to a fine of up to \$1,000.

A professional is defined in section 72 of the Act. The list sets out examples only. If your work involves children but is not on this list, you may still be considered to be a professional for purposes of the duty to report. If you are not sure whether you may be considered to be a professional for purposes of the duty to report, you should contact your local children's aid society, professional association or regulatory body.

HO 2.3

Even though under the Act, a youth and recreation worker does not include a volunteer, a volunteer board member who is performing professional or official duties with respect to a child may be considered to be a professional for purposes of the duty to report and be subject to the duty to report for professionals. For example, a doctor who volunteers her time to serve as team doctor would be required to report suspected neglect.

Note: The duty to report overrides the provisions of any other provincial statute, specifically, those provisions that would otherwise prohibit disclosure by the professional or official. The only exception for “privileged” information is in the relationship between a solicitor and a client. Should a civil action be brought against a person who made a report, that person will be protected unless he or she acted maliciously or without reasonable grounds for his or her belief or suspicion.

Note: The duty to report applies not only to harm or risk of harm suffered by a child when participating in the sports organization, but also where the harm or risk of harm arises outside the sports organization, e.g., in the child’s home. For instance, if a coach becomes aware of a pattern of suspicious injuries or bruises on a child’s body and has reasonable grounds to suspect that they were caused by the child’s parent, the coach must make a report to a children’s aid society. The coach must make the report him or herself. Neither the coach, nor the sports organization, should investigate before reporting. That is the job of the children’s aid society.

The Act states that the duty to report is an ongoing obligation. This means that a person who has additional reasonable grounds to suspect that a child is or may be in need of protection is required to make a further report to a children’s aid society even if the person has made previous reports about the same child.

The following section on “Amendments” is optional. Only participants familiar with the previous CFSA provisions would find it useful.

The information provided here reflects the amendments to Ontario’s *Child and Family Services Act*, which came into effect March 31, 2000. Appendix A (of the Making It SafeR handbook) provides a comparison of the former provisions and the amendments that replaced them. In brief, the new amendments:



TIME	SPEAKING NOTES	CUES
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1. Replaced the previous general duty to report and the special duty to report for professionals with a single duty to report for both the public and professionals.
2. Expanded the definition of a child “in need of protection” in order to encourage earlier action to protect children.
3. Made it clear that a person who has reasonable grounds to suspect that a child is or may be in need of protection must make the report directly to the children’s aid society. The person must not rely on any other person to report on his or her behalf.

15 MINS

The Criminal Code of Canada

Give participants time to read the handout.

HO 2.4

The Criminal Code of Canada is a federal law; it applies across Canada. It includes a number of offences related to sexual abuse of children. HO 2.4 describes the most relevant elements of the *Criminal Code* for this discussion. We should point out especially the following:

Definition of Sexual Assault: An assault is generally defined as the intentional application of force to a person by another without the victim’s consent. Sexual assault is an assault that is committed in circumstances of a sexual nature that violates the sexual integrity of the victim.

A number of offences relate specifically to the direct or indirect touching of children’s bodies for sexual purposes. There are also other sexual offences against children. Organizations working with children should be aware of these offences.

The issue of when someone **consents** to sexual activity is a very thorny and complex one. However, two basic principles regarding consent and children are very clear in the *Code*:

1. No consent is possible where the person alleged to have committed the assault is exercising authority over the victim in some way;
2. No one under the age of 14 can be said to have legally consented to sexual activity with an adult.

Penalties and punishment for those who sexually assault children can include fines and imprisonment for a term as long as a life sentence.



TIME	SPEAKING NOTES	CUES
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Prohibition Orders: The *Criminal Code* also deals with situations where it may be necessary to obtain the court's assistance to keep certain individuals away from children. Any person who fears, on reasonable grounds, that another person will commit certain sexual offences against children under 14, may apply to a court for an order prohibiting the suspected offender from participating in activities that involve contact with children under 14. The order may prohibit attendance at specified places where children under 14 are likely to be present, such as schoolyards or public parks, for up to 12 months.

HO 2.5

To protect children from contact with people who have been convicted or those conditionally discharged, the *Criminal Code* permits a court to impose a prohibition order. The order prohibits the offender from attendance at places where children under 14 are likely to be present, or from obtaining paid or volunteer employment in a position of trust or authority with children under 14. This prohibition order may be for life or a shorter period.

Give participants some time to review the handout individually or in small groups, and ask them to identify any questions or issues that need clarification or response. Commit to seeking the information and sharing the information.

30 MINS

The Common Law

The common law is not a piece of legislation like the CFSA or the *Criminal Code*. The common law is the name given to the body of judge-made law that has developed over the past several hundred years. It is based on fundamental principles, such as the duty of care.

HO 2.6, 2.7 and 2.8

A sport organization owes a duty of care to individuals involved in its programs and activities, to avoid contact that presents an unreasonable risk of danger or harm.

Organizations must take preventative action to keep children from harm. They must also respond quickly if harm is done, but responding is not enough. They must take reasonable steps to prevent sexual abuse of children in their programs, on their premises, or at the hands of people who act for the organization, or who come to the programs or onto the premises.

The following statement is emphasized because it is essential that organizations understand this principle. Use HO 2.7.

The law recognizes that there are risks in any activity. It requires that individuals and organizations take reasonable measures to prevent, minimize, avoid, or eliminate the risks.

There is no one single “standard of care” or level and kind of care that an organization must provide to protect children. In law, the standard of care is ordinarily measured by what the reasonable person of ordinary prudence would do in the circumstances. The standard will vary depending on the specific circumstances of each organization. For example, what an organization would be expected to provide for five year olds would be somewhat different than what it would be expected to provide for fifteen year olds in its care.

Liability

“Liability” is legal responsibility for an action or inaction that causes harm or wrong. Liability is imposed by courts in their decisions interpreting or enforcing laws. Individuals can be held liable, and so can organizations. If an organization or an individual involved in it does not meet the standard of care required under specific circumstances, the organization or those individuals may be found liable for negligence. There can be liability for actions an organization took, but an organization may also be liable for not taking action it should have to protect others against an unreasonable risk of harm.

An organization can also be held liable for the harmful actions of its employees or others authorized by the organization to act on its behalf.

As part of its duty of care towards children, the organization must look at the real and potential risks and dangers involved in its programs and activities, and act to minimize, avoid, or eliminate them. The Fourth Module leads organizations through the steps of assessing risk and creating prevention measures, including screening staff, to address the risks.

Unincorporated Associations

If an organization is successfully sued, liability is usually limited to the organization itself and its assets. Usually, the individual officers and directors of an incorporated organization will not be held personally liable. On the other hand, it is the members of an unincorporated organization who will generally be held to be personally liable for the actions (or inaction) of the unincorporated association. Their personal assets, and particularly those of the individuals who lead and control the organization, can therefore be at risk, as they can be named personally in any lawsuit. It is therefore particularly important for such organizations to take all necessary measures to minimize the risks of sexual abuse occurring to the children participating in its programs.

Give participants time to review the handout and talk about the information just given; record questions, issues that need clarification or response.

10 MINS

Risk Management: Keeping Participants SafeR from Harm and Minimizing Exposure to Liability

Adequately assessing the risks involved in their programs and activities, and acting to reduce, eliminate, or avoid those risks, is one of the best ways that organizations can protect the children in their care, and minimize their exposure to liability.

Risk management entails:

1. Asking the questions “what could go wrong here? How? With what consequences?”
2. Asking “how do we avoid these things?” “How do we eliminate them or minimize the possibility that they will happen?” And doing those things that will minimize, avoid or eliminate the risk of harm.

Module 4 sets out a framework and model for good risk management in sport organizations.

Give participants a few minutes to digest all of this and talk to one another in their small groups, if possible. Ask for final questions, comments; commit to finding answers if possible.



TIME	SPEAKING NOTES	CUES
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SUMMARY AND CLOSING

Review briefly the key topics covered in this Module:

- The Child and Family Services Act
- The Criminal Code of Canada
- The Common Law
- Risk Management

Thank participants and invite them to attend Module 3 on dealing with suspected or alleged cases of child sexual abuse. Make sure questions and comments and requests for information are recorded for follow-up.