

PREVENTING

Sexual Abuse

of children in sport

making it

safer

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safer

P R E V E N T I N G
Sexual Abuse
of children in sport

This contains general information only and does not constitute legal advice.

Consult your legal advisors as to how these general principles may affect your organization

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Purpose

This Handbook is a guide for Ontario sport organizations, offering tools to help them prevent the sexual abuse of children involved in their activities and to address such problems if and when they arise.

Children should not have to protect themselves from sexual abuse. It is unreasonable to expect them to do so, given the dynamics that almost always exist between children and most sexual offenders.

Taking reasonable steps to protect children from sexual abuse is the responsibility—morally, ethically, and legally—of the adults entrusted with their care—including adults involved in sport organizations, among others. Unfortunately, public revelations of current and past sexual abuse of children and youth involved in sport and recreation, both in small rural communities and in big cities, reveal all too clearly that abuse can happen anywhere.

This Handbook has been prepared especially for use by sport organizations. Thus its focus is, and the examples used are, all about sport.

Each year in Ontario some 1.1 million children participate in organized sport.ⁱ These activities are generally well organized, competently provided, and safe. They provide wonderful opportunities for children to have fun and to learn to develop physical, team building, and leadership skills; opportunities to build healthy relationships, learn social skills, build trust, expand their understanding of themselves and their capacities; and opportunities to experience important lessons in growing up.

However, here too, children may learn other, harsher lessons. Some children learn that they

are not safe, that they are not protected from harm. Sometimes they are abused by the very people who are there to teach, guide, and lead them. The damage done to them is always traumatic, and sometimes lasts a lifetime. The short-, medium- and long-term effects are felt by the children, their families, friends, all members of the organization, and by the larger community itself.

It is very hard to accept that some individuals who involve themselves in sport—people we may know, people whose own children participate—are in fact sexual abusers of children. Nevertheless, the risk is real, and the people who run sport programs, and the families and communities that enjoy them, must act to protect children from those relatively few individuals.

This Handbook is called Making It SafeR. The word SafeR is used deliberately. Every activity involves some risk, and the only absolutely safe organization is one that offers no programs or activities at all. The goal here is to make programs or activities SafeR—as safe as is reasonably possible.

No one can identify a sex offender on sight. Furthermore, no matter how well prepared an organization is, it may be very difficult to identify an abuser before he or she commits a first act of abuse. However, there are concrete and relatively simple ways to limit the opportunities and means abusers have to take advantage of children. It is the objective of this Handbook to assist organizations to develop and implement protective measures to prevent, to the greatest extent possible, the occurrence of the sexual abuse of children within their programs or activities.

What this Handbook is Not

Some behaviours that are defined as abuse when directed towards a child may constitute harassment when directed towards a peer or when perpetrated between adults. This Handbook focuses on sexual abuse of children. Organizations may also wish to consider instituting protective measures to deal with issues of harassment—including sexual harassment—that occur between peers or directed at adults. The Canadian Association for the Advancement of Women and Sport and Physical Activity and the Canadian Hockey Association in their *Speak Out!...Act Now!* publication devotes a chapter specifically to harassment.

It can be found on the Internet at <http://www.harassmentinsport.com/e/handbook/>

Making It SafeR presents general advice concerning sexual abuse of children involved in sport organizations that may not apply to all situations. This Handbook does not eliminate the need for an organization to consult its own lawyers about its particular legal obligations. The Ministry strongly advises organizations to obtain legal advice when developing their own protective measures, including procedures for responding or reacting to incidents or allegations of abuse.

Ontario's Child Protection Law

This Handbook discusses certain provisions of Ontario's child protection law, the *Child and Family Services Act*. Amendments to this Act came into effect March 31, 2000. Appendix A provides a comparison of the former provisions and the amendments that replaced them.

Education Modules

Sport organizations seeking to make themselves SafeR are going on a journey that involves a number of steps, and they should involve as many people as possible. To help organizations

Four education modules offer material that can be used in educating and training members of the board of directors, coaches, leaders, administrators, and parents

navigate this route, this package also includes four education modules. They offer material that can be used in educating and training members of the board of directors, coaches, leaders, administrators, and parents. The modules set out the steps using the imagery of a road map, so that participants can identify their particular starting points, the various legs of the trip, and their destination.

The Modules include handouts on the *Child and Family Services Act*.

The most comprehensive study of sexual harassment and sexual abuse in Canada, the Badgley Report of the mid-1980s, concluded that “53 per cent of females and 31 per cent of males have been victims of one or more unwanted sexual acts... these acts included witnessing an indecent exposure, being touched on a sexual part of the body, being sexually threatened, and being subjected to an attempted or actual sexual assault.” The Report further indicated that in approximately four out of five cases, the incidents happened to the victims when they were children or youth.ⁱⁱ

Researchers also know that sexual abuse cuts across all economic, social, cultural, religious, class, and racial lines. Children of both sexes, of all ages, races, religions, cultures, economic, and social backgrounds, are victims. Experts agree that the vast majority of victims of child sexual abuse never come forward to disclose that they have been abused.ⁱⁱⁱ Furthermore, boys and men are significantly less likely to disclose abuse than are girls and women. Even when a child does tell, the situation is sometimes hushed up and no action taken.

Children, in particular, are vulnerable to being sexually abused. A 1997 survey of 179 police departments in six Canadian provinces showed that 62 per cent of victims of sex offences were under 18 years old; 30 per cent were children under 12, while 32 per cent were youths between 12 and 17 years of age.^{iv} Children generally admire and seek approval from older people, and that characteristic makes them vulnerable and most at risk. If that older person has care of, or is in charge of a child for some period of time, the levels of vulnerability and risk rise significantly. Children are generally taught to obey, respect, depend on, and trust adults. Additionally, children, up to

approximately the age of 10, have little real understanding of sexuality. This puts them at risk because they may simply not know what is happening to them, or that what is happening is, in fact, sexual abuse. They may feel confused or distressed by what is being done to their bodies and still not realize that it is a violation that they should disclose. Sexual predators are known to use this lack of understanding to manipulate their young victims into “participating” in the abuse and maintaining silence.

Most people who commit acts of sexual abuse are people well known to, and trusted by, their victims—they are not strangers. According to the above-mentioned survey of police departments, fully 77 per cent of victims knew the person who abused them; in 50 per cent of all cases, the accused was a friend or acquaintance while in 28 per cent of cases, the accused was a family member.^v The relationship between children and leaders in sport organizations is generally not one of child to stranger. Instead, it tends to be a close relationship in which children look to those in charge for protection, guidance, support, and encouragement, much as they look to their parents or others whom they perceive as being in charge.

Sport organizations, like many voluntary organizations, used to be considered above suspicion. Most individuals involved in these organizations were parents, and people generally knew one another. Few activities were undertaken to minimize the risk of sexual abuse since no one believed it to be necessary.

According to survey of police departments, fully 77 per cent of victims knew the person who abused them;

Tragically, sexual abusers have taken advantage of that very fact. They have used the informal and trusting nature of most sport organizations, and the depth of relationships formed there, to target victims and to abuse children, sometimes over extended periods of time.

Even if an organization has been lucky enough to escape having a sexual abuser operating in its midst in the past, organizers cannot simply presume it will always remain that way. Those who manage and control sport organizations need to take reasonable steps to ensure that abuse will not and cannot happen in the future. Sport organizations must take proactive steps to prevent as far as possible the sexual abuse of children involved in the programs and activities of the organization. This imperative is both a moral and a legal one. Ignoring the issue is not an option.

Children Who are Especially Vulnerable

Experts agree that children with physical, emotional, social, developmental, or other disabilities are at far greater risk of abuse than other children. Recent studies estimate that they are two to 10 times more likely to be abused than children without disabilities.^{vi}

This may happen for a number of reasons. The disability may make it harder for these children to protect themselves than their peers. They may not be able to talk, walk, run, or to understand what is happening to them. They may not be able to tell anyone that they have been abused. In addition, children with disabilities are more likely than other children to live away from their families, and they may have fewer protectors than other children.

Also at higher risk are isolated or lonely kids: a non-athlete on a competitive sport team, a very shy child, an insecure adolescent, an unpopular

child, a child living in an unhappy home, and a child who isn't receiving the attention and affection that every child needs.

Who Abuses Children?

Many people think they will know by looking at someone if he or she is a child molester. Unfortunately, sexual abusers do not stand out from the crowd. Most have good jobs or professional careers; they may be married with children of their own; they often abuse many children over a number of years before they are caught or reported; and many have no record of negative involvement with the police. **A British Columbia study revealed that in 80 per cent of the occurrences of sexual abuse studied, the offender occupied a position of trust.** the offender occupied a position of trust. Fifty per cent of the offenders were professionals.^{vii}

Most sexual abusers have a close relationship with their victims, and take advantage of that relationship. Child sexual abuse is rarely a random, single act. Far more often, it takes place over a long period, and the inequalities of power and the relationship between the adult and the child are absolutely fundamental to the abuse. Consequently, sexual abusers actively seek positions of trust over children such as those in sport settings, at schools, churches, and day care centres, among others. They spend

a great deal of time—often over many years—developing relationships, building trust, moving into positions of authority and power, and building up a facade of respectability and credibility.

Yes, there are sexual abusers who kidnap children off the street or from a park. However, most child sexual abuse comes at the hands of those entrusted with the care of children. Parents and family are highest on the list, followed by friends and people in positions of trust—clergy, teachers, doctors, caregivers, social workers, coaches—volunteers and paid staff, including professionals in all kinds of settings.

Of course, the vast majority of people involved in sport organizations want only the best for the children involved. Nevertheless, those who prey on children take advantage of the fact that voluntary organizations are generally trusting and in need of assistance.

Sexual abusers look for circumstances that will make it relatively easy to target victims. Sport organizations feature many of them:

- They involve children of all ages.
- They are sometimes gender specific—that is, they involve only boys or only girls. Some male offenders admit that they target boys, not because they are attracted to boys, but because involvement with boys attracts less attention than would involvement with girls.^{viii}
- Children are generally taught to obey adults in authority, including leaders. The younger the child, the more likely he or she is to accept whatever the leader does or says.
- Parents don't always question, or question often enough, what leaders do, especially in really competitive sports.

- Sport organizations are so grateful for the help that they sometimes don't question the actions of leaders.
- Many, if not most, of the people involved are parents. They tend to be trusted automatically.
- In many activities, a close relationship between leaders and participants is encouraged.
- In some activities, particularly competitive sports, that close relationship is vital to success.
- Many activities require children to dress and undress, and to shower in locker rooms or common shower areas.
- Leaders may have to touch children to demonstrate or correct a move or a technique, or to help them if they are hurt.
- Players may spend a great deal of time alone with leaders, travelling, training, and waiting between games at tournaments. The risk of abuse increases with the number and duration of one-on-one situations—in cars, hotels, locker rooms, private homes.
- Overnight trips are common.
- One of the reasons children join sport programs is to enhance their self-esteem and self-confidence. Abusers take advantage of those with low self-esteem and low self-confidence.
- Some children's dreams are wrapped up in their sport abilities. Consequently, coaches or leaders wield enormous power over them.

What Are the Consequences of Child Abuse?

The damage can be deep, crippling, and permanent. Sexual abuse robs children of their innocence through a gross violation of trust.

It robs them of their freedom to be children, to love wholesomely, and to believe that the world is a safe place. The following characteristics are commonly shown by victims of sexual abuse. Some may be short-lived, others may be lifelong.

- Anguish, fear, shame, guilt, anger
- A sense of helplessness, powerlessness
- A sense of betrayal, and inability to trust
- Hostility, aggression, violence
- Withdrawal from friends, activities
- An inability to establish normal, loving intimate relationships, including romantic and sexual relationships
- A loss of self-esteem, depression
- A fear of being judged
- A fear of being known as a victim, a fear of being stared at, laughed at, whispered about

- A fear of losing friends
- Alcohol or drug abuse
- Eating disorders
- Truancy, loss of interest in school
- Inability to secure or hold a job
- Prostitution
- Dissociative Identity Disorder (formerly known as Multiple Personality Disorder)
- Sexually transmitted diseases
- Self-mutilation
- Unwanted pregnancies
- Suicidal thoughts, attempts, success

Experts in the treatment of sexual abuse agree that the sooner a victim is identified and provided with adequate support and treatment, the less likely these symptoms are to emerge or to last for a long time.

Characteristics of Sex Offenders

The 1997 data from police departments showed that, of the accused sex offenders, 98 per cent were male.^{ix} However, many researchers and child sexual harassment and abuse workers believe that sex offences committed by women are significantly under-reported and that the percentage of women offenders is probably much higher than 1.5 per cent.^x

The 1997 police data show the age breakdown of accused sex offenders as follows:

- 1 per cent were 11 or younger
- 18 per cent were between 12 to 17;
- 37 per cent were between 18 and 34;
- 21 per cent were between 35 and 44; and
- 23 per cent were 45 or over.^{xi}

Many adult offenders began their activities when they were teenagers. In Ontario, between 1979 and 1984, nearly 1,400 people between the ages of 16 and 19 were convicted of one or more sexual offences.^{xii}

Definition of "Child"

Generally speaking, the term "child" refers to girls and boys from infancy to the age of 18. Certain exceptions apply, as in Part III of the *Child and Family Services Act*, which deals with child protection. Part III only applies to children under the age of 16, unless they are already under the care of a children's aid society.

Child Sexual Abuse

Child sexual abuse may be characterized as the use of a child by an older or more powerful child, adolescent, or adult for sexual gratification. Sexual abuse can include contact and non-contact actions.

Examples of contact:

- kissing or holding a child in a sexual manner;
- touching a child's sexual body parts or forcing someone to touch another person's sexual body parts;
- penetrating a child anally or vaginally, with objects or fingers;
- having vaginal, anal, or oral intercourse with a child.

Examples of non-contact:

- flashing or exposing sexual body parts to a child;
- watching intrusively as a child changes or showers;
- speaking or communicating sexually or seductively with a child;
- showing pornographic films, magazines or photographs to a child;
- having children participate in the creation of pornographic materials;
- forcing a child to watch a sexual act performed by others;
- objectifying or ridiculing a child's sexual body parts.^{xiii}

Children in Need of Protection

For the definition of children who may be in need of protection, which may include abuse and neglect by a parent or person in charge of the child, reference should be made to Appendix A of this Handbook.

Profile of a SafeR Organization:

A SafeR organization is one whose leaders have expressly committed themselves to tackling the problem of sexual abuse of children. They are

prepared to spend time to think about and put in place the measures required to become and to remain a SafeR organization. They are honest with themselves and others about the reality of the organization and what needs to be done.

The board of directors, members of the executive, administrators, leaders, coaches, officials, parents, and participants don't ignore problems. They act to prevent and to respond to them.

People who suspect that a child may be in need of protection, report it to the children's aid society and where appropriate, the police (please see the section on the duty to report for more detailed information). Those in charge of the organization take whatever steps are necessary to cooperate and respond to the investigation, exercise solid judgement, and make good decisions about matters within their control. The organization is diligent about introducing and carrying out safety measures.

Changing the motivation of sexual abusers is not within the control of organizations. However, it is within their control to shape or re-shape the organization's atmosphere, operations, structures, and communication, to reduce or eliminate opportunities for and the means of abuse. Those in charge cannot and must not expect or rely on others, not even the police or child protection agencies, to take the lead in making their organization SafeR. The police

and the child protection agencies have little or no control over the atmosphere, operations, structure, and communication of an organization. Rather, these agencies are resources and can help with prevention. Of course, if abuse is reported or alleged, they will investigate.

However, the people who run the organization (whether it is incorporated or not) are the primary actors: they control the organization and are responsible for it.

Sexual abuse of children is not just "the board of directors' problem." Abuse is a community problem—it affects everyone. Sexual abuse can raise deep personal emotions and fears, and can do incalculable harm to all. Consequently, it should not be dealt with by a small isolated group, but by the organization as a whole. To minimize difficulties and maximize support for prevention and response efforts, the board or executive should involve the entire community of participants (parents, leaders, coaches, managers, trainers, administrators, and, as appropriate and useful, players, sponsors, funders, parks and recreation departments, police, child protection officials, the media, and the general public) right from the start. The single most important step in achieving a SafeR organization is making action against abuse an organization-wide commitment.

The law is clear that the sexual abuse of children, in any form, by anyone, is not acceptable. A sport organization's legal obligation to protect the children involved in its activities from sexual abuse occurring while a child is in that organization's care, comes from different legal sources.

The Criminal Code and the *Child and Family Services Act (CFSA)* are statutes that make child abuse an offence under the law. The *CFSA* also makes it an offence for a professional who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be in need of protection, and fails to report it to a children's aid society. (Under the *CFSA*, an abused child is "in need of protection.")

Sport organizations also owe a duty of care, imposed by common law, to individuals involved in their programs, to avoid or prevent conduct that presents an unreasonable risk of danger or harm.

An organization needs to become familiar with each of these legal regimes in order to understand what the law requires, what legal steps must be taken to deal with issues concerning child sexual abuse, and to be able to educate all of its members—including staff, volunteers, parents, and participants—about the legal rights and obligations that exist to protect children.

Child and Family Services Act

Ontario's *CFSA* 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 Act 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 child abuse 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 also liable to the same penalties.

The Duty to Report

The *CFSA* recognizes that each of us has a responsibility for the welfare of children. It states that 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.

The duty to report applies not only to harm or the risk of harm ("harm" as set out in the *CFSA*, section 37) suffered by a child when participating in the sport organization, but also where the harm or risk of harm arises outside the sport 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 the children's aid society.

Grounds for Reporting

The Act sets out, in subsection 72(1), the situations in which a child is said to be “in need of protection.” Appendix A of this handbook contains this subsection in full.

Some of the situations in which a child is said to be “in need of protection” are also categorized as “abuse.” For example, one situation where a child is said to suffer “abuse” is where physical harm is inflicted by a person having charge of a child. Another situation is where the child requires medical treatment, which the person having charge of a child will not provide.

Ongoing Duty to Report

Subsection 72(2) of 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.

People Must Report Directly

Subsection 72(3) makes 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.

What are “Reasonable Grounds to Suspect”?

A person need not be sure that a child is or may be in need of protection to make a report to a children’s aid society. “Reasonable grounds” are what an average person, given his or her training, background and experience, exercising normal and honest judgement, would believe.

Special Responsibilities of Professionals and Officials, and Penalty for Failure to Report

Professional people and officials have the same duty as any member of the public to report a suspicion that a child is in need of protection. However, the Act recognizes that people working closely 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.

Subsections 72(4) and 72(6.2) deal with the penalty for failure to report. 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.

Professionals Affected

Subsection 72(5) provides examples of people who perform professional or official duties with respect to children. They are:

- health care professionals, including physicians, nurses, dentists, pharmacists and psychologists;
- teachers and school principals;
- social workers and family counsellors;
- priests, rabbis and other members of the clergy;
- operators or employees of day nurseries;
- youth and recreation workers, but not volunteers;
- peace officers and coroners;
- solicitors; and
- service providers and employees of service providers.

The list contains illustrations only. An individual whose work involves children but is not listed above may still be considered to be a professional for purposes of the duty to report. If an individual is not sure whether he or she may be considered to be a professional for purposes of the duty to report, he or she should contact a local children's aid society, or the professional association or regulatory body to whom he or she belongs for advice on this matter.

It should be noted that a volunteer 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. For example, a doctor who volunteers her time to serve as team doctor would be required to report suspected abuse or be subject to penalties. There is an exception provided in the legislation for volunteer youth and recreation workers.

Legal Protection for People who Make a Report to a Children's Aid Society

Subsections 72(7) and 72(8) speak to professional confidentiality, and protection from liability.

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.

In other words, the professional must report to a children's aid society even when the information is supposed to be confidential or privileged. (The only exception for "privileged" information is in the relationship between a solicitor and a client.) If a civil action is 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 suspicion.

Criminal Code of Canada

The Criminal Code contains numerous provisions relating to the sexual abuse of children, such as prohibitions against sexual assault and other sexual offences.

Sexual Assault

An assault is generally defined as the intentional application of force to a person by another without the victim's consent. This can include mere touching.

Sexual assault is a type of assault. It has been described as a situation where assault of a sexual nature violates the sexual integrity of the victim. This includes an act that is intended to degrade or demean another person for sexual gratification.

Other Sexual Offences Against Children

The *Criminal Code* specifically recognizes the vulnerability of children to sexual offences. There are several offences dealing with the direct or indirect touching of children's bodies for sexual purposes. These are as follows:

- "Sexual interference" is the direct or indirect touching, for a sexual purpose, of any part of the body of a child under the age of 14;
- "Invitation to sexual touching" involves inviting a child under the age of 14 to touch his or her own body or the body of any other person, including the person doing the inviting for a sexual purpose;
- "Sexual exploitation" is an offence committed by anyone in a position of trust or authority towards a young person, defined as someone between the ages of 14 and 18 years old, who touches that young person for a sexual purpose or invites touching for a sexual purpose.

There are also additional offences that may or may not apply to a particular situation. These offences are:

- bestiality performed in the presence of or by a child, where the child is under the age of 14;
- indecent acts, including the exposure of genitals for a sexual purpose, where a child is under the age of 14;
- living off the avails of child prostitution, where the child is under 18 years of age;
- attempting to obtain the sexual services of a child under 18 years of age; and
- permitting any sexual activity involving a child under 18 on premises within the control of the offender.

An accused can be convicted of sexual assault against a child on the basis of the child's evidence alone.

Penalties under the Criminal Code vary depending on the nature of the offence and the circumstances involved. They range from fines to substantial prison sentences.

3. Consent

The issue of when a person can be said to have voluntarily agreed to engage in sexual activity is a very complicated one in criminal law.

In general, where someone has abused a position of trust, power or authority in inducing a person to engage in sexual activity or in committing sexual assault, there is no consent. There are many other Criminal Code provisions relating to consent.

4. 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.

To protect children from contact with convicted sex offenders, 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.

The Common Law

The common law is the name given to the body of judge-made law, as distinct from law that is set out in statutes or Acts of government. The common law is based on a number of basic principles such as the duty of care.

The Duty of Care

With respect to sport organizations, the duty of care encompasses the legal obligation of the organization to protect people, especially children and other vulnerable individuals, from harm that might arise in their programs and activities. Sport organizations owe a duty of care to the individuals involved in their programs, to avoid or prevent conduct that presents an unreasonable risk of danger or harm.

However, organizations are not legally obligated to provide an absolute guarantee of safety for children involved in their programs. The law recognizes that there is an element of risk involved in all activities. **Organizations are strongly encouraged to seek legal advice on how they can best meet their “duty of care” obligations.**

The standard of care will vary depending on the specific circumstances of each organization, on the nature of the relationship between the organization and its participants, the nature of the programs offered, and the risks involved in those programs. The question is whether or not the organization and the individuals responsible for it have done what is necessary, under the circumstances, to reasonably ensure that harm does not come to those in its care.

There is no one single standard of care expected of sport organizations. That standard will vary depending on the specific circumstances of each organization, on the nature of the relationship between the organization and its participants, the nature of the programs offered, and the risks involved in those programs. The question is whether or not the organization and the individuals responsible for it have done what is necessary, under the circumstances, to reasonably ensure that harm does not come to those in its care.

At a minimum, this involves assessing the general risks inherent in providing activities for children, and the more specific risks peculiar to


the organization and its activities. The fact that an organization deals with children—especially if those children have a physical or mental

disability and are even more vulnerable than others—has a bearing. The organization cannot assume, in those circumstances, that the children will take normal precautions for their own safety. The organization must anticipate children’s vulnerability, innocence and deference to authority. Those characteristics must be considered when making decisions about an organization’s programs, its facilities, and the people who lead, manage or supervise its activities. (See Position Analysis for Screening form provided in Section V, under subsection “Risk Assessment of Operations.”)

Organizations can be found liable for harm that might arise from their action or inaction relative to their programs and activities.

In addition to the direct liability of an organization for failure to take reasonable steps to prevent sexual abuse, an organization can also be held liable for the harmful actions of the people who act on its behalf. A court might find an organization liable even if the organization itself had no knowledge of the harmful actions, and the actions took place through no fault of the organization’s. This includes the actions of paid staff, volunteers, and other people who provide a service to the organization (e.g., co-op students, or people on community service orders).

To conclude, failure to adequately protect children from harm may result in a court action against the organization, officers, directors, employees or others. A court could find that there has been negligence, in breach of the duty of care. The court would likely award damages to the child harmed. Civil lawsuits for damages arising from sexual abuse may be brought by victims many years after the alleged abuse took place. Some successful lawsuits have taken place 20 years after the incidents.



The bottom line is that the best way to protect the organization is to do everything prudent, reasonable, appropriate, and necessary to minimize the risk that harm could be done to children by those who provide services, whether employed or volunteers. Such steps should be well documented.

Unincorporated Associations

If an incorporated 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.

5

Prevention of Sexual Abuse Within An Organization

Education, communication, and commitment are key to an organization's efforts to prevent the occurrence of sexual abuse of the children in its care. Everyone involved in a sport organization needs to be educated about child abuse and its consequences. Ongoing, active communication—both internal and external—is necessary to communicate the organization's commitment to protect the children in its care. An ongoing commitment of time, energy, and resources is required in order to adequately assess and address the risks inherent in the organization's activities.

It is recommended that sport organizations develop formal measures that will foster safety and protection for all, minimize the risk of harm coming to any child in their programs, and assist sport organizations in meeting their legal duty of care

It is recommended that sport organizations develop formal measures that will foster safety and protection for all, minimize the risk of harm coming to any child in their programs, and assist sport organizations in meeting their legal duty of care outlined in the earlier section.

These protective measures include

articulating statements of principle, policies, specific procedures, practices, and guidelines to deal with the prevention of, and response to, sexual abuse. It is not recommended, however, that an organization begin its abuse prevention efforts by developing policies. Instead, important groundwork must be carried out in order to ensure that these policies, and the procedures, practices, and guidelines that emerge from them, are built on a solid foundation.

The following building blocks are required:

1. Learn about child sexual abuse and its consequences and why sport organizations are among the targets of sex offenders.
2. Commit the organization to take action to prevent and respond to abuse.
3. Invite all stakeholders to participate in the fight against abuse; listen carefully to their concerns.
4. Understand the moral, ethical and legal obligations of individuals and organizations to protect children.
5. Formally articulate the values and principles that underlie and shape the organization's commitment to, and action on the prevention of child sexual abuse.
6. Conduct a risk assessment of the organization's atmosphere, operations, structure, and internal and external communication, including identifying local resources that can assist in prevention efforts; and address the risks identified.

This foundation will, in turn, be a solid foundation for abuse prevention measures, including the development of policies, response procedures, practices, and guidelines. Items 1 to 4 above have been discussed in Chapters II and IV, "Recognizing the Need for Action," and the "Legal Imperative." Items 5 and 6 above, concerning risk management, are dealt with below.

Risk Management

Organizations act to prevent sexual abuse by making risk management a fundamental part of their activities. Risk management entails identifying the things that could go wrong or cause harm in their programs and activities,

Risk management entails identifying the things that could go wrong or cause harm in their programs and activities, and taking steps to prevent them from happening, or minimizing their impact if they do.

and taking steps to prevent them from happening, or minimizing their impact if they do. It has two important objectives: to protect participants from harm, and to protect the organization and its members from successful liability claims. The best way to achieve the latter objective is to achieve the former.

**Risk Management Framework:
Atmosphere, Operations, Structure,
Communication**

In order to manage risk effectively, a framework that can help organizations consider all the issues in an orderly, meaningful way is needed. One way (there are others) of organizing risk management activities is to consider the organization as if it were made up of layers: risk management measures in all these layers are needed. They are, from the outside in: Atmosphere, Operations, Structure, and Communication. They are described below.

Atmosphere:

How does the organization feel? An organization can have the best, strictest policies in the world. It can rigorously screen staff. It can have all kinds of procedures designed to maximize safety—but if people don't feel welcome, or part of a team, or safe, or that they can raise questions and disclose concerns, then the policies and screening and procedures may be useless, even an impediment. Do people feel like they are part of a team? That they are working together? Can people talk about risks, concerns

here? What happens to those who do? What is the ethos of this organization? What are its traditions? How does its history affect its current situation and its approach to risk? What are the unwritten rules of the organization? What impact do they have on what really goes on? What can be done? And how to get things done?

Structure:

How does the organization deal formally with issues of risk? What are the principles on which it acts? The policies that rest on those principles? The procedures and practices that are consistent with those policies? Is there someone or some group formally charged with responsibility for risk management? Are there

Risk management measures in an organization's atmosphere, structure, operations and communication are needed.

training and education programs in the organization about risk issues? Is there monitoring, follow-up, evaluation? Are appropriate changes made to risk measures on the basis of monitoring, follow-up, and critical evaluation?

Operations:

What does the organization do? Where and how does it do these things? For whom? Under what circumstances? Who provides services on behalf of the organization? What are the inherent and foreseeable risks in all of these elements of the operation? What risk management measures are in place to eliminate, avoid, or minimize these risks? How are risk management measures at the Operations level integrated with risk management measures in the Atmosphere, Structure, and Communications levels of the organization?

“Programs, Premises, and People” are the heart of Operations of any organization. Screening takes place here.

Communication:

What does the organization say, internally and externally, intentionally and unintentionally, in verbal and written communication, about risk issues? Unclear, muddled, contradictory communication can add to risk—if people don’t know what’s really going on, they make assumptions, act on rumours, hearsay, etc. In addition, it is important that all communication, internally and externally, be consistent. If communication internally is unclear, it won’t become clear when the organization tries to communicate externally.

Conducting a risk assessment of an organization’s atmosphere, operations, structure, and communication is an important step in understanding not just where an organization, and its participants, are vulnerable, but also to ascertain what prevention efforts can and should be taken. People, including children, participate in sport programs in order to benefit from them—to gain skills, to have fun, to meet other people, etc. Together with those benefits, however, comes the risk that something harmful might occur, such as physical injury or sexual abuse. Individuals and organizations must act to reduce those risks as much as possible, in order to ensure that the benefits of participation outweigh those risks.

To assess risk an organization should ask itself two key questions:

- 1) What could go wrong—that is, what opportunities and means exist for sexual abuse to occur?

- 2) How do we reduce the likelihood of such things going wrong? Can the risks be eliminated, or at least minimized?

Responding to risk then requires an organization to act on the answers to those questions.

Every organization has the capacity to do a competent risk assessment of its own atmosphere, operations, structure, and communication. This is best carried out by a group from within the organization, representing all the stakeholders—all of the officers and directors, paid or volunteer staff with supervisory or management responsibility for volunteer coordination, human resources management and program coordination, and representatives of the players/participants, parents, coaches or other program staff, officials, sponsors, representatives of the municipality where appropriate, and funders, if any.

A RISK ASSESSMENT AND MANAGEMENT GUIDE

Here is a guideline to assist an organization in conducting such a risk assessment: to consider how the various aspects of the organization may provide a greater or lesser risk of harm; to detect harm if it is occurring; and to minimize the chance of it happening again.

The first time an organization does this it will probably take two to four meetings (10 to 20 hours total). This may seem like a lot of time; however, once the first risk assessment has been done thoroughly and the results are on paper, periodic reviews of the risk assessment can be completed in a matter of a few hours once or twice a year.

Risk Assessment of Atmosphere

The atmosphere is the heart of the organization. Beneath the layers of what the organization says about itself, how it is set up, and what it does, lies its essential reality. What is the organization really like? How do people feel about participating in its activities?

Step 1: Assess the Risks

To assess an organization's atmosphere, ask "How does the organization feel? Is it friendly, cold, or something in between? What are the prevalent attitudes of the participants, parents, staff, etc.?"

Identify and assess the ways in which the atmosphere creates, increases, or decreases the risk of child sexual abuse occurring. The organization's stakeholders should ask themselves the following questions:

- Is child sexual abuse ever discussed within the organization, either informally or in formal meetings?
- Does the organization provide any information about the issue to participants, parents, staff, volunteers, and officials?
- Does the organization acknowledge or believe that child sexual abuse could happen within its programs? Is the organization afraid to confront the issue?
- If a child were to become the victim of sexual abuse by a member of the organization, could that child really tell someone within it about this? How would he or she be received? Would he or she be taken seriously? Would anything be done in response? Would anyone know how to meaningfully respond?

- If an adult or a child were to report suspicions that a child was the victim of abuse, how would the organization react?
- Does the organization really maintain confidentiality, by confining sensitive information only to those who need to know?
- If children cannot or do not feel safe about talking to someone in the organization about abuse, does that increase the possibility that someone within the organization could abuse them? If adults are not believed either, does that increase the risk of something happening?
- Does the atmosphere within the organization encourage abusers because its members find it so hard to talk about the issue of abuse? Does the atmosphere make it more or less likely that an abuser could harm one or more children and go unreported and/or not be stopped?

Step 2: Act to Control the Risks

Take action to control the risks posed by the organization's atmosphere as identified above. Eliminate risk entirely where possible, and minimize it to the extent possible where it cannot be eliminated altogether. An organization can consider transferring any risk that cannot be eliminated, where it is possible to do so, usually through the purchase of insurance. Still, it is up to those involved in and responsible for an organization, to create and sustain an atmosphere that actively discourages abusers, and supports participants who disclose or report abuse or suspected abuse.

To promote that atmosphere, an organization should ask itself the following questions, and find out what concrete action it can take to act on the answers:

- How can we foster an atmosphere where we can openly talk about sexual abuse? How can we deal with any paranoia, fear or embarrassment about talking about such issues?
- How do we help children and adults feel that they can talk to people in the organization about these issues safely?
- How do we change and/or enhance our organization's atmosphere so that our commitment and determination to stop abuse is clear and obvious to all?

A SafeR Atmosphere:

An organization that has completed the risk assessment process in relation to its atmosphere and that has responded by minimizing those risks to the extent possible, should look a lot like the following:

- Individuals, in particular, those in control, believe that child sexual abuse is a serious issue.
- People believe in taking preventative steps. They don't dismiss risk assessment and management as unnecessary bureaucracy.
- Anyone can raise issues without being censured. The organization encourages open discussion.
- The organization's leaders make it clear, by their attitudes, demeanour and communication, that they believe sexual abuse needs to be discussed. They take advantage of ready-made opportunities and create others to raise the issues.
- The organization arranges for all members to learn about preventing and responding to abuse. Children's questions and concerns are treated seriously, so they believe that any disclosure or allegation they make will be

acted upon. No child is ever told to stop making things up, or to go away and forget about it, or that he or she is making too much of nothing. The organization actually takes action when necessary, and is seen to do so.

- At the same time, people know that they will receive a fair hearing and due process if a child makes an allegation against them.
- People recognize the importance of respecting others' privacy and their personal information, but also recognize that protecting a child's well-being is more important than protecting others' privacy.
- Sexual abuse is treated properly as an issue that affects the whole community of an organization. The board or executive doesn't withdraw to make decisions about how to deal with abuse. Everyone is encouraged to participate in making things SafeR.

RISK ASSESSMENT OF OPERATIONS

Risk assessment of operations—the programs and activities and people that are at the heart of an organization—is the most important step in preventing sexual abuse of the children involved in those programs and activities.

Programs and activities vary enormously from organization to organization. Similarly, the risks associated with the sexual abuse of children vary depending on such parameters as the type of programs offered, age and/or gender of participants, level of supervision, setting, whether travel is involved, etc.

Accordingly, a detailed analysis of all of an organization's programs needs to be undertaken, to assess what risks exist for each one, what can be done to minimize them, and, where necessary, what may need to be revised to eliminate risk altogether where it is found to

be too great. Such an analysis must break down each activity by category. What follows is a suggested framework for the analysis: the complete picture will vary from organization to organization.

In the SafeR organization, operations are assessed regularly. Risks posed by any element are identified and flagged, then minimized or eliminated where possible.

The Sport or Activities:

Analyze the activities themselves. Following are the kinds of questions that should be considered:

- what is the ratio of adults to children
- are parents involved and on-site during the activity
- does it involve the use of change rooms and/or showers
- does it involve travel away from home and away from usual caregivers
- does it involve overnight travel
- what form of transportation is used
- how much supervision of the coach/trainer/activity leader occurs
- do the participants require assistance dressing (i.e. into uniforms), and if so, who provides that assistance
- is special assistance required for those with disabilities, and if so who provides that special assistance
- what is the nature of the physical facilities used—are they open, visible, accessible or confined, etc.
- is billeting with host families used and how is it monitored
- how is conflict handled, and discipline administered to participants when required

- what risks arise from the setting (a ball park, a swimming pool, a hotel, etc.) of the activities.

Look at all aspects of the sport or activities in its program, including the following:

- whether an individual or team sport or activity is involved
- the recreational or competitive nature of the program
- is it a house league or travelling team; does it include travel arrangements, billeting, commercial accommodation, chaperones; and does it specify adult-child ratios
- the level and nature of physical and other contact between players and coaches or trainers, or participants and leaders
- the location and set-up of playing fields, practice sites, arenas, game sites away from home, community or neighbourhood centres, cars, buses, locker rooms, showers, private homes, schools, etc.
- its codes of conduct, including sportsmanship, discipline, behaviour, and contact/communication
- the degree of autonomy and authority vested in coaches, officials, leaders, parents
- the presence of organization officials at events
- the awareness of and education about sexual abuse prevention built in to program, sport, activities.

The answers to these and other similar questions should provide a useful guide to understanding how identified risks can be minimized. For instance, where out-of-town overnight travel is required for a sports team, guidelines can be established that require that all team members be accommodated at least in

pairs, with no adult (other than a parent) staying overnight in the same room as the children. Where the use of change rooms is required, guidelines can require that there be always two adults in the change room at the same time, and that separate facilities are provided for girls and boys. A rule might decree that adult staff members or adult volunteers do not shower at the same time as the athletes. Where an organization's personnel are required to transport children, they should do so only to the extent necessary, with no side trips to additional places, and with other personnel or parents, or at least several children, in the vehicle at all times. These suggested guidelines are examples that an organization can consider once it has identified the risks inherent in its activities and programs. See "Speak Out! ... Act Now!" for an exhaustive list of sample guidelines.

Players and Participants:

Look at:

- Age, sex, and the characteristics and vulnerabilities of boys and girls at different ages, including levels of trust, impulse control, maturity, experience, disabilities, personality traits, family circumstances.
- Interests and intentions in participating, including fun and recreation, competition or professional careers, skill levels.

Staff and Volunteers

Conduct thorough screening of everyone who wishes to do work for the organization, not on the basis of whether they are strangers or well-known, or youth or adults, but on the basis of the risks and needs of the position the individual holds or hopes to hold. Screening must be done before, and especially after, hiring or acceptance.

Screening should be conducted for all positions in the organization, including board or executive members, administration and finance staff, sponsors and convenors; all program staff, such as coaches, trainers, managers, officials; and all support volunteers, including team parents, drivers and chaperones.

SCREENING IN SPORT ORGANIZATIONS

Screening is essential to the prevention of child sexual abuse, but it is one of the most widely misunderstood and underused protection measures.

The basic facts about screening are:

Screening is an ongoing process.

Absolutely everyone who does work for or provides a service on behalf of a sport organization, must be screened.

The screening tools that are used must be specifically related to the various positions in an organization.

A police records check is one screening tool among many.

The Ontario Human Rights Code governs the recruitment process.

The basic facts about screening are these:

1. Screening is an ongoing process. It is important to screen before someone is hired or engaged by an organization. However, screening does not end at that point. In fact, the most important screening can and must only be done after people are accepted by the organization. The reason is obvious: it is not possible to know for certain whether someone is right for a particular position until after he or she is in place. It is possible, in some cases easy, for the wrong people to slip through pre-hiring screening measures.

2. Absolutely everyone who does work for or provides a service on behalf of a sport organization, must be screened. Screening measures for those who are in positions of trust, power, or authority, including those who may spend time alone with, or be in charge of, children, must be particularly intense and thorough.

3. The screening tools that are used must be specifically related to the various positions in an organization. It is not appropriate to screen an occasional fundraising volunteer to the same degree or with the same tools as the coach of a travelling rep team. Screening must be based on the position that the individual now holds or wants to hold (e.g., board member, parent rep, coach, manager, leader, administrator), and not on the basis of whether or not the person is well-known or a stranger.

4. A police records check is one screening tool among many. It is not a foolproof screening measure, and should never be the first, last, or only screening tool used by an organization.

5. The Ontario Human Rights Code governs the recruitment process. It prohibits discrimination against any person on the basis of sex, sexual orientation, race, ancestry, ethnic or national origin, colour, citizenship, creed, age, marital status, family status, handicap, or a record of offences (a conviction for a Criminal Code offence for which a pardon has been received and not revoked, and/or a standing conviction for a provincial offence).

What this means in practice is that an organization cannot legally screen out an applicant for a position based on any of the categories identified above, unless the organization can clearly demonstrate that it

has a legitimate reason, objectively verifiable, based on the essential requirements of the specific position. Organizations must therefore be careful that the screening measures they use do not include questions or criteria that would constitute discrimination. Although this section of the Human Rights Code applies explicitly to paid employees, recent comments from the Supreme Court of Canada suggest that organizations should treat volunteers in the same way.

Before Developing Screening Measures

Screening measures, like any other prevention mechanism, must be based on a solid foundation if they are to actually protect people from harm. The actual screening measures chosen by an organization must be relevant to the positions for which they are being used, not chosen because they are easy, inexpensive, or familiar.

Before an organization identifies the specific screening measures it will use, it should have already:

1. Learned about child sexual abuse and its consequences and why sport organizations are among the targets of sex offenders.
2. Committed the organization to take action to prevent and respond to abuse.
3. Invited all stakeholders to participate in the fight against abuse, and listened carefully to their concerns.
4. Understood the moral, ethical, and legal obligations of individuals and organizations to protect children.
5. Formally articulated the values and principles that underlie and shape the organization's commitment to, and action on the prevention of child sexual abuse.

6. Conducted the risk management audit of the atmosphere and operations.
7. Taken steps to avoid, eliminate, or minimize risks as far as possible, by changing the way some things are done, possibly by eliminating some things altogether. For example, an organization can dramatically reduce risk if it does not permit youth or adults who are in charge of children to be alone (that is, one-to-one) with a child.

An organization can develop its policies on screening at the same time as it determines the appropriate screening measures it should use. These screening policies are general guiding statements for the organization, such as:

“Everyone who provides a service on behalf of the organization will be screened; however, the level of screening will depend on the duties and responsibilities of each position.”

Screening measures refer to activities such as pre-hiring interviews, reference checking, police records checks, on-the-job monitoring through post-hiring client interviews, etc.

Choosing Appropriate Screening Measures

An organization should not choose screening measures on the basis of what is easy, inexpensive, or familiar, and it should never screen people on the basis of whether or not they are strangers or long-time members. Decisions about appropriate screening measures must be made for each position (e.g., manager, team parent, board member, coach, administrator, activity director, etc.), and based on the actual requirements and risks of each position, not on the identity of the person applying for or holding that position. A risk assessment of each position will provide sport

organizations with objective, clear, and justifiable reasons for screening people in or out of certain positions.

Start with a complete list of all the organization’s positions. Use the job descriptions for each one as the starting point. If such descriptions don’t exist, create them at the same time the assessment is done. Each position needs to be analysed separately, because the risks associated with, for example, coaching 4- to 6-year-olds will be very different from the risks associated with coaching 16- to 18-year-olds. The first assessment will probably take a couple of hours; however, others will be done much more quickly. The time commitment is necessary, and will help to satisfy the organization’s requirement to be duly diligent in this area. Once complete, the information should be recorded and kept on file, so that the organization can identify how and why it made the decisions it did.

Risk Assessment of Each Position

A Position Analysis for Screening form that organizations can use in their assessment of each position within the organization follows. The steps in this process include the following:

1. Analyzing the position
2. Conducting a risk assessment of the position
3. Identifying the qualifications for this position, on the basis of the answers to questions addressed in steps 1 and 2
4. Identifying appropriate pre-hiring screening mechanisms for the position being analyzed
5. Identifying the appropriate post-hiring screening mechanisms for the position being analyzed.

Position Analysis

(Using POSITION ANALYSIS FOR SCREENING form ©)

Name of position (*Be specific - e.g., “Coach, house league, soccer, boys 10 to 12” and not just “Coach”*):

NB: The responses are samples of the kinds of information that an organization should seek to provide.

1) ANALYSE THE POSITION

A. Describe the players or participants

- i. Describe the players or participants (*e.g., boys, 10 to 12 years of age*)
- ii. What are the characteristics of these players or participants? In what ways are they vulnerable? (*e.g., fearless, immature, impressionable, curious, etc.*)

B. Describe the activities related to this position

- i. What is the nature of the position? (*e.g., casual, group, one-to-one, level of power, dependence, trust, etc.*)
- ii. Actual physical activities—what does a person in this position do? What’s involved in fulfilling this position? (*e.g., demonstrating skills, teaching rules, playing the game, driving players to games, supervising, etc.*)

C. Describe the setting(s) in which these “activities” take place (*e.g., arenas, locker rooms, cars*)

D. How is the position supervised?

- i. Who sees what goes on between the individual in this position and the players or participants?
- ii. How are people in this position actively supervised? How often? By whom? By what means?

2) CONDUCT A RISK ASSESSMENT OF THE POSITION

A. Assess what could go wrong

- i. What kinds of things could go wrong here? What harm might be done? What risks are involved because of the characteristics of the players, the activities involved, the settings, and supervision? How serious could it be if something did go wrong or if someone was harmed?
 - Bodily Harm (physical injury)
 - Personal Injury (abuse - sexual, physical, emotional, etc.)
 - Loss of Reputation
 - Financial Loss
 - Property Damage

B. Determine response to the identified risks

What could be done to change how this “job” gets done or the circumstances around it in order to minimize the risks?

3) ON THE BASIS OF THE ANSWERS TO QUESTIONS (1) AND (2), IDENTIFY THE QUALIFICATIONS FOR THIS POSITION: what do we need to know about each applicant in order to properly screen for this position?

Qualifications (Identify as many as are really crucial to the fulfilment of the position):

- i. (e.g., competence to coach hockey at x level)
- ii. (e.g., good character - trustworthiness, honesty, dependability, etc.)
- iii. (e.g., ability to understand and work well with boys of this age group)
- iv.
- v.

4A. IDENTIFY APPROPRIATE PRE-HIRING SCREENING MECHANISMS FOR THIS POSITION

(Ask which tools will provide the information needed by the organization to know if the individual has the characteristics and qualifications identified in Step 3)

Qualification	Pre-Hiring Screening Tools (Examples)
Competence	Certification, experience, record of courses, training, references, written tests, demonstration, scenarios, role playing, etc.
Character scenarios, etc.	References, interviews, police records checks, role playing
Ability to work with kids, etc.	References, interviews, demonstrations, role playing, etc.

4B. ON WHAT BASIS (BASES) COULD WE LEGITIMATELY SCREEN AN APPLICANT OUT OF THIS POSITION BEFORE HE/SHE IS HIRED/ENGAGED? (These must relate to the qualifications established in question 3 as being necessary for the position)

The basic questions that the organization has to ask itself:

- i. Are our position qualifications essential? (Are they necessary to the position?)
- ii. Are they reasonable?
- iii. Are they bona fide? (Is our organization requiring such-and-such a qualification in good faith, or because we are trying to screen certain people out?)
- iv. Could we accommodate someone with a particular need or set of circumstances? (e.g., could someone with a particular disability be assisted to do a particular job?)

5) IDENTIFY THE APPROPRIATE POST-HIRING SCREENING MECHANISMS FOR THIS POSITION: Which tools will help us do the ongoing screening that is necessary and appropriate to this position, to ensure that the individual continues to display the qualifications and characteristics identified in question 3?

Criteria	Post-Hiring Screening Tools (examples)
Competence	Probation period, observation in orientation, training, duties of position, monitoring, supervision, evaluation, feedback from self and others, random, unannounced spot checks, commitment to and action on ongoing skills development
Character	Observation, monitoring, supervision, evaluation, feedback from self and others
Ability to work with children, etc.	Observation, monitoring, supervision, evaluation, feedback from self and others, random, unannounced spot checks

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Pre-Hiring Screening Tools

This is not a menu - The first three should be used for every position. The others should be chosen when and as they are relevant to the qualifications identified by the organization through the use of the Position Analysis for Screening form.

- i. Designing or analyzing positions carefully to identify, assess, eliminate, or minimize risks
- ii. Creating accurate, thorough, position descriptions
- iii. Creating initial application forms based on information from 1 and 2
- iv. Doing first, second, or third interviews, one perhaps in the home of the candidate, if players or participants are going to be there with applicant. Each one should be conducted by different people, preferably more than one person each time
- v. Conducting police records checks
- vi. Conducting reference checks (business, volunteer, personal, including family members)
- vii. Conducting medical checks (hepatitis B, TB)
- viii. Doing specialized testing/interviewing—demonstrations of skills, qualifications
- ix. Checking credentials
- x. Employing demonstrations, scenarios, role plays
- xi. Offering explicit information about the organization's stand on and activities around sexual abuse prevention in handbooks, recruitment tools, application forms, etc.

Post-Hiring Screening Tools

- i. Conducting orientation
- ii. Training - initial, ongoing

- iii. Imposing a probation period
- iv. Using a buddy system - matching the new person with another experienced staff member, and having the "buddy" supervise the new person.
- v. Undertaking regular supervision, observation, monitoring, evaluation
- vi. Periodically reassigning (if possible)
- vii. Requiring regular participation in group activities
- viii. Undertaking random, unannounced spot checks
- ix. Having regular formal contact with players, families-seeking feedback
- x. Undertaking ongoing awareness campaigns, education of players and staff regarding sexual harassment and abuse and other safety issues

The Importance of Post-Hiring Screening

Completing the risk assessment for each position will allow an organization to identify appropriate pre-hiring screening measures. More important, the audit information will give the organization what it needs to determine on an ongoing basis, if that person is doing a good job or not, or if there are things amiss. Close supervision, observation, monitoring, and evaluation of his or her work is by far the best way to continue to screen this person, making sure that he or she is fulfilling the work of the position and is not harming the people in his or her care.

Like many illicit activities, sexual abuse is a furtive and secret activity. The best way to protect against abuse is to bring activities into the light, through deliberate efforts to be aware of what people are doing and how they are

doing it. The most effective screening tools of all are supervision, observation, monitoring, evaluation, and feedback from all involved. And you don't have to hire security guards or create huge amounts of paperwork to do these things.

These measures may be as simple as:

- Having a board or committee member visit each game site or activity site each night there are games, wearing a jacket that clearly identifies him or her as a person of authority in the organization. He or she shouldn't just watch the game, but actively talk to the parents, the children, the coaches, leaders, getting feedback and asking if there are any concerns or issues.
- The organization establishes a rule, and enforces it, that two parents of different children must accompany each team on all trips, and that no adult stays in a room overnight with a child.
- The organization actively educates children, parents and coaches about sexual abuse. This could be done any number of ways, including having people go to team practices and talk with children there, or by including it in a skills-building day.
- The organization undertakes a formal evaluation process of the people who provide its services: coaches, leaders, officials, board members, fundraising volunteers, etc. This doesn't have to be a tremendous burden of time. Twice a season, the board could ask people to remain 15 minutes after a particular game, so that a member of the board could talk to them and get at any issues, questions, or concerns.

Using Police Records Checks as a Screening Tool

Police records checks are often incorrectly called criminal checks, CPIC checks, criminal reference checks or police checks. All these names are incorrect, and their use can present problems for organizations. Instead, they should be called what they are: checks of records held by the police.

All police records checks done by local, regional, and provincial police in Ontario at this time include the following:

Check of CPIC Records:

A check of one or more databases housed at the Canadian Police Information Centre (CPIC) in Ottawa, maintained by the RCMP.

Information about the following may be found through a check of CPIC records:

- Criminal records of adults
- Criminal records of young offenders
- Records of "not guilty [of a criminal offence] by reason of mental disorder"
- Charges pending under federal statutes (e.g., *Narcotics Control Act*, *Income Tax Act*)
- Probation, prohibition, and other judicial orders (prohibitions against firearm ownership, against taking employment or volunteer position near children etc.)

Although all of this information is available to the police, it may not, for a variety of reasons, make it into the report that the police provide.

Local Records Checks:

Police services also maintain local or regional files. However, not all police services in Ontario examine these files when doing a police records check.

Every organization should determine from the police service(s) in its area what a “police records check in our area” includes and doesn’t include.

Checks of local and regional files and databases may include information about some, any, or all of the following:

- convictions for summary conviction offences (minor Criminal Code offences)
- charges pending under provincial statutes (this may also be available nationally, on CPIC)
- records of civil judicial proceedings with respect to the abuse of children
- admissions of abuse against vulnerable people, where charges were not laid
- information about offences for which a conditional or absolute discharge was given (this may also be available nationally, on CPIC)
- suspect data (information about an individual identifying that he or she was and remains a suspect in a crime)
- information about the individual as a complainant, victim, or witness to an occurrence. (For example, if an individual calls the police to report an impaired driver, a record of that call will be on file; or if someone was the victim of a crime, a report will exist with that information on it.)

Again, because of the very strict legal constraints on the disclosure of information about individuals, although this information is available to police, it may not be put into a police records checks report. The police must be extremely cautious when deciding to whom and for what purpose information will be released.

Limitations on the Information in Police Records Checks

Even if all the information available to the police were included in police records checks reports, these checks still cannot guarantee that people are “good” people. That’s because:

- Criminal record information is only one kind of information the police have on file, and it may not be the most relevant information in every case.
- People have committed crimes without being caught or prosecuted. The absence of a criminal record does not guarantee anything about the character of an individual.
- A police records check is current only to the time it is produced.
- Without fingerprints, there is no guarantee that the individual whose name and date of birth were checked does not have a criminal record in Canada.
- An individual may lie about his or her name, or may have legally changed his or her name, and therefore a record may not be revealed. Following the enactment of the *Community Safety Act* in 1998, an individual’s change(s) of name will be flagged on police records; however, this cannot be done retroactively.
- Local police records are not necessarily available to other police services. If someone has moved around, it may be necessary to have that person request a local records check from the police service in the municipality or region from which he or she has moved. This is a crucial issue for sexual abusers, who often move from town to town. Ontario police services, through the Ontario Association of Chiefs of Police, have developed guidelines calling for a check of information on addresses for the last five

years. Local and regional policing services are working to cooperate with one another on this matter.

- People may receive pardons for criminal offences, including very serious offences. That information is not usually available through a police records check. However, under the recently amended *Criminal Records Act*, where a person is seeking a position of trust or authority relating to children or other vulnerable people, information relating to any pardons for sex-related offences will be made available to those responsible for the well-being of the children or vulnerable people. Before the information is disclosed, a request will need to be made by the responsible individual or organization and the consent of the person seeking the position will be required.
- Police records checks of information from other countries is usually not available for this process, unless the person involved can arrange to have it sent to Canada.
- Police have information they may not be able to release, or may decide not to release.
- Information on Young Offenders is a perfect example of this last point. The *Young Offenders Act (YOA)* is very strict in regards to the release of information about the criminal record of a young person, and the police cannot provide young offender records to most organizations. The police can, however, provide the report to the young person for a very specific period after the conviction (i.e., a period set by the *YOA*).
- Information about some convictions simply is not on police records. For example, records of convictions under the *Child and Family Services Act* may not be usually found in police records.

What About Police Records Checks?

How does an organization decide if a record is relevant and should keep someone out? On the basis of the risk assessment of each position. For example, after doing the risk assessment of the position, an organization may decide that for that position it is essential that an individual have no history of violence or record of charges or convictions for sexual assault. If the assessment was done in good faith, is based on objective reality, and can be defended as realistic, then it would be defensible to refuse that position to someone with that kind of history.

Organizations should also be sensitive to another issue. Most of the attention related to screening is being directed at coaches or leaders. Does this mean that all people who offer to take these positions should be automatic suspects? No, it is just that sexual abusers are most interested in those jobs because they provide more opportunities and means to abuse than any other position in a sport organization.

Police records checks are an important screening tool and are absolutely necessary for some positions. For any position in which an adult will be alone with children for any length of time, especially while travelling to games, etc., organizations should do police records checks, because they are readily available and may provide useful information.

Sport organizations should never limit their screening mechanisms to police records checks because of the limited information obtained from such checks. To assist in minimizing the risk of harm to children, as well as assisting in protecting the sport organizations from liability arising from a breach of their legal duty of care,

sport organizations should undertake a full risk assessment and undertake appropriate risk reduction strategies as outlined in this material.

Protocol for Requesting Police Records Checks

All police services require a signed consent form from the individual whose records are being checked. However, policies and practices among the over 100 police services in Ontario may vary, not only with respect to the type and amount of information they would check and release, but also with respect to whether the police would:

- Release the results of the check to the organization (for whom the records are being checked), or the individual (the subject of the check). The Law Enforcement and Records Managers' Network (LEARN) of the Ontario Association of Chiefs of Police recommends that police services throughout Ontario deal directly with the individual, starting with the filing of the request for a check;
- Charge fees, and how much; and
- Require the organization to enter into an agreement with the police, to ensure that the organization understands its duties relative to the request for, receipt, use, and disclosure of information in police records checks.

LEARN recommends that police services throughout Ontario enter into such an agreement with organizations. In this agreement, an organization would undertake to:

- Have or obtain an understanding of the implications of the Human Rights Code as it applies to hiring/approving volunteers. It shall have a clear view of what information might constitute a "bona fide" reason for refusing to hire an applicant or volunteer;

- Provide, on its position application form a statement that the individual agrees to space participate in, and consent to, a police records check, and further, the form must clearly define the classes of information that will be provided within this process. The form must be signed and presented to the police;
- Ensure the applicant understands the classes of information referred to in the above paragraph;
- Understand the police are providing the information as a service to the organization, and is in no way commenting on the suitability of the person for the position being caught;
- Advise the applicant or volunteer that the information provided by police may not necessarily mean a disqualification from the position;
- Understand the police are providing information based upon personal descriptors provided and cannot guarantee that the police records check would provide all details concerning the individual;
- Agree to have a police records check conducted only on the selected candidate or volunteer, not all applicants; and
- Guarantee that the information will only be used for the purpose provided and will not be disseminated to any other person or agency.

LEARN also recommends that police impose additional requirements relating to the use and control of information provided by the police, as follows:

- That the organization will not alter the information supplied in any manner; and

- That the organization shall destroy (shred or mulch) the information after use or that it will maintain the information in such a manner as to prevent unauthorized access.

Risk Assessment of Structure

The structure of the organization refers to its observable outlines and its underlying form, and how each part of the organization relates to the other. Risk assessment of the structure of a sport organization follows the steps used for assessing its atmosphere and operations.

Step 1: Assess the Risks

Identify and assess the way the organization's structure may put children at risk for being sexually harassed or abused. Ask the following questions:

- Does the organization have a single, consistent vision of, and commitment to, child safety and the prevention of abuse? Is that vision explicit in the mission statement, statement of principles, codes of ethics or behaviour? Is it relayed clearly and consistently by members of the board or executive, by the administrator, by staff?
- How does the organization pay formal attention to risk management? Is there a board member or other person designated as the risk manager? Or is there a risk management committee or task force? Although the whole organization must be involved in risk management, at some point specific individuals must ensure that risk management measures are devised, implemented and enforced, and that risk management issues are referred to the board or executive for decision, amendment, review, evaluation, etc.
- Is there a formal code of conduct? How is it publicized, implemented and enforced?
- Has the organization established policies, procedures, practices, and guidelines for preventing and responding to child sexual abuse, and based them on its mission, values and principles, and moral, ethical and legal obligations?
- Were policies established on the basis outlined above, after a thorough assessment of the risks in the atmosphere, operations and structure, or were they simply borrowed from others?
- Does the organization know how to ensure that its principles, policies, guidelines and processes are consistent with current legislation and case law? Does it check periodically to ensure this consistency?
- How are policies enforced? Do policies give sufficient direction to those who must enforce them, and yet permit them enough room to make decisions without having to come back to the board for every minor issue or question?
- Are there guidelines about adult-child ratios and chaperones in change rooms, on trips, in hotels, along with other risk issues identified in the risk assessments of atmosphere, operations, structure, and communication?
- When quarterly, semi-annual, or annual reviews of the organization are done, is risk assessment one of the formal components?
- Are guidelines for activities communicated to members? Do leaders or delegates have the authority to require that policies are to be respected and guidelines followed?
- Have formal procedures for responding to disclosures, allegations, suspicions and complaints of sexual abuse been established, in cooperation with local child protection authorities?

- Has the organization prepared and implemented training, awareness-building, prevention and response education for its players, parents, leaders and board? How high a priority is this? Have specific people been assigned to make it happen? Have resources been assigned to the effort?
- If the organization is unincorporated, is there a perception that no one is in charge and thus, a higher risk of child sexual abuse? How does the organization formally act to minimize the risk of sexual abuse?
- Is the risk increased because the individuals running an organization are not aware of their obligations, especially legal ones, and of their potential personal liability?
- Is abuse prevention an explicit part of the organization's programs? Is it named in the goals for the year? Or is it an afterthought?

Step 2: Act to Control the Risks

- If the mission and value statements of the organization do not state the organization's commitment to preventing abuse, articulate them, in consultation with the members of the organization, and add them to formal documents.
 - Establish a position for risk management on the board and make risk assessment an explicit and ongoing part of formal evaluations.
 - Establish sexual abuse prevention and response policies that are consistent with the law and that reflect the realities of the organization.
 - Establish guidelines for activities consistent with the risk assessment results. Be as specific as possible about child-adult ratios, rules about out-of-town trips and sleeping arrangements, etc.
- Establish response mechanisms for allegations, disclosures, suspicions and complaints of child sexual abuse.
 - Ensure that those in charge of the organization understand the laws related to sexual assault and abuse, where the reporting threshold lies, and the procedure to be followed if an incident, allegation, or disclosure crosses that threshold.
 - Clarify and identify the training and education needs of all involved (e.g., coaches, administrators, parents, officials, members, etc.) and make it a priority to offer them opportunities to develop their awareness and skills. Set aside or raise the resources necessary to make these things happen.
 - Ensure that it is someone's (not "everyone's") or several specific individuals' responsibility to prepare for and conduct abuse prevention awareness and education. Ensure that the budget exists to support it.
 - Develop implementation and enforcement processes for guidelines and policies. Commit the organization to these policies and guidelines. Establish mechanisms and confer adequate authority on the appropriate people so that they can take action.

Formal Sexual Abuse Prevention and Response Measures

The development, implementation and enforcement of a sexual abuse prevention and response program, including sound principles, policies, procedures and practices, is good risk management. Such a program serves a number of purposes:

- it raises awareness of abuse issues within an organization, sending a strong message to everyone involved in the organization (including the children the measures are designed to protect) that abuse will not be tolerated;
- it promotes a healthy and safe environment;
- it provides a mechanism to deal with abuse issues quickly, effectively and responsibly; and
- if implemented responsibly, it provides a defence to a lawsuit.

Each organization must develop its own formal protection program, and should not rely solely on policy samples that might be available. While a model can provide good information and a structure upon which to formulate a sound risk management program, every organization will need to develop its own measures to reflect its own values, and the particular administrative and other practical realities of the organization.

The risk assessment and work that organizations do should help them articulate the values and principles that form the foundation of the organization's commitment to sexual abuse prevention. On that foundation, the organization should then build a formal set of sexual abuse prevention and response policies. Organizations must recognize that such policies and procedures, if not based on the solid foundation of risk assessment and the articulation of values and principles, will not serve the organization or its members. Likewise, "creating a policy" is not the goal of the work of preventing sexual abuse. Policies are important and useful, but policies alone cannot protect people or organizations.

Any policy on preventing and responding to sexual abuse should be concise and should clearly establish:

- The goal and focus of the policy, including a statement of the purpose, scope and application of the policy. It should state clearly the principles, values and commitment of the organization to do what is reasonable and prudent—according to the circumstances—to prevent sexual abuse in the organization. It should identify who is and what situations are covered by the policy;
- relevant definitions, including that of sexual abuse, making clear what standard of behaviour is expected, and what behaviour is not acceptable; and
- recognition of the organization's moral, ethical, and legal obligations to act on disclosures, allegations, suspicions, or complaints of sexual abuse by children involved with the organization, and a statement of its commitment to do so. This should include a description of the organization's legal obligation, and the legal obligation of anyone involved with the organization who has a reasonable suspicion that abuse has occurred, to report all suspected child abuse to the authorities, pursuant to the requirements of the *Child and Family Services Act*. There should also be a statement that, upon conclusion of any investigation by the police and/or child protection authorities, the organization will, where appropriate, take disciplinary action against an abuser, within the appropriate disciplinary process.

The policy should identify that the organization will establish:

- a clearly defined complaint mechanism, indicating to whom complaints of abuse or suspected abuse should be made within the organization, and how complaints will be

dealt with, including the protection of confidentiality, to the extent possible; and

- a clearly defined system of progressive discipline and dismissal, as well as grievance processes, for all volunteers, paid staff, and all other people who provide a service to the organization.

It is not appropriate for an organization to carry out an internal investigation of an allegation of child sexual abuse in lieu of the investigation procedures carried out by child protection authorities and/or the police. All incidents of alleged or suspected abuse (and other situations when a child is or may be in need of protection) must be reported, and nothing should be done by an organization that might interfere with the official investigation of the police and/or child protection authorities. Any internal investigation should await the outcome of the external one. It may, of course, be necessary to remove an alleged offender from contact with children immediately. This can be done by suspending an employee with pay or suspending a volunteer pending the outcome of the external investigation. Clearly, any time such an incident is alleged, it is important that the organization obtain legal advice to assist in dealing with all of the issues that arise.

If allegations of child sexual abuse are substantiated, it is, of course, important for an organization to take disciplinary action and review all of its prevention measures to attempt to determine how such an incident occurred. Finally, all of the formal prevention measures must be reviewed regularly, and revised where necessary, whether any incidents of abuse have come to light or not. All members of the organization must be made aware of the protection program, including the sexual abuse policy. The policy should be posted prominently at the organization's premises; be directly,

explicitly, and repeatedly communicated to paid and unpaid staff; be made available to all members; and any revisions should be publicized as quickly as possible.

What is most important is not what the organization has written on paper. It is whether those policies were formed on a solid, legally defensible foundation, and whether actual measures were in place, implemented, and enforced.

Organizations need to understand that changes in policy do not necessarily change attitude or behaviour.

Policies Should not be Confused with Procedures

Policies are guiding, general statements; procedures outline what exactly will be done, and how. It is important not to confuse the two, so staff should be directed through the policies to determine appropriate procedures and practices. It becomes extremely unwieldy for staff to have to go back to the board every time a procedure needs to be changed. The danger is that people will simply ignore the policy and procedures if they become unworkable in practice.

Policies Should not Promise Zero Tolerance

Organizations may be tempted to include a "zero tolerance" clause in their policies and other documents. The strong language of an absolute promise of safety is very compelling. However, organizations should not promise what they cannot deliver. They should not use language that implies, promises, or guarantees that a child will never be harmed or sexually abused while in their programs or activities. The law requires that organizations act to an appropriate standard of care in meeting their duty of care, and that that this standard is not an

absolute guarantee. However, if organizations themselves set the standard, they will be held to it by a court.

Risk Assessment of Communication

What an organization says about itself, and how—internally and externally, intentionally and unintentionally—in written, verbal, non-verbal, and any other form—will either reinforce or undermine its commitment and efforts to prevent child sexual abuse. An organization's communications, both internal and external, form the outside layer of the organization. Assessing its communication and acting to ensure that internal and external communication support and further the goal of awareness, protection, and safety, is the fourth major risk assessment activity an organization must undertake.

Step 1: Assess the Risks

The organization should ask itself the following questions:

- What kind of information is provided to players, parents, leaders, officials and sponsors, about child sexual abuse?
- Are built-in communication opportunities such as team practices, games or tournaments used to raise the issue of child sexual abuse (not all the time, but periodically)?
- Do the internal communication mechanisms—newsletters, letters home, schedules, team lists, etc.—offer information and highlight the names and telephone numbers of organization representatives who can be contacted by parents or players who have concerns?
- Is there a balanced approach to the issue in internal and external communication? Does our communication make people overly

frightened about child abuse, or does it make them think it doesn't exist or it couldn't happen here?

- How does the organization recruit help? Is the message: "we are 'desperate' for volunteers"? If it is, what does that tell people? That any warm body will do, with no questions asked?
- What kind of information about the organization's commitment to preventing child sexual abuse is included in promotional or registration material? What is included in orientation handbooks, players' guides, coaches' or leaders' guides and officials' guides?
- If internal communication never mentions child sexual abuse, is it more likely that an abuser will believe that the organization either doesn't believe it is an issue or doesn't want to deal with it?
- Do people talk about child sexual abuse in the organization? Do leaders encourage discussion or create an uneasy silence about it?
- Is there any information in our communication that will tell a child how or where to go if he or she wants to talk to someone in the organization about a situation?
- What kind of verbal and non-verbal clues do leaders give? Do people get the non-verbal message that this is too frightening a subject to talk about, so don't do so?

Step 2: Act to Control the Risks

The organization's goal here should be to create or reshape its internal and external communication, so that it reinforces and supports its commitment to prevention and response.

The organization should look at:

- What could be added to the existing regular internal communication that will point out the organization's awareness of, and commitment to, preventing child sexual abuse?
- What communication strategy (fridge magnets, postcards, meetings and handouts, etc.) would give players, parents and leaders information on who to contact and how to discuss concerns about abuse?
- How can existing mechanisms (such as team practices, games, tournaments, etc.) be used as media to tell people about sexual abuse to build awareness, to educate and to train them about it?
- What additional forms of communication or events should be developed to communicate information or to otherwise support the prevention effort?
- What about external communications? How can organizations make their commitment to protection clear and unequivocal, in an effort to dissuade offenders or potential offenders from even approaching? (Recognizing, of course, that if the communication isn't backed up by action, it will have no effect.)
- How can the organization get its message out to the public and to potential players? Are there community newspapers, cable TV shows, regular town or community centre meetings, or other media or forums we can use to get the message out?
- How does the organization learn more about communicating, in all ways, its attitude towards and commitment to preventing abuse?

An organization that communicates clearly and consistently—to its members, paid and unpaid staff, employees, volunteers, participants, and the public—that it is committed to providing as safe an environment as possible, and which supports that commitment with the other prevention mechanisms discussed above, will be a SafeR organization.

Communication can take place through education programs about sexual abuse, formally and informally through information that is provided to participants, parents, leaders, etc. about child abuse, and in more formal newsletters, etc. Information should be communicated about the issue, about the organization's efforts to deal with the issue, including the names and telephone numbers of contacts concerning the issue, as well as highlighting the mechanisms that are in place to protect children and the organization.

Information also needs to be communicated directly to the children involved, to let them know to whom they can talk, and to help encourage them to feel comfortable speaking to someone within the organization about the issue.

Failure to provide this kind of communication sends entirely the wrong message: silence may signal to potential abusers an organization's lack of commitment to the prevention of abuse. Communicating an organization's commitment and information about its protective measures—clearly, consistently, often, and through as many different media as possible—will help discourage people who may think that the organization provides an easy target.

Responding to Complaints of Sexual Abuse

Every organization that serves children must respond whenever an allegation, disclosure or suspicion of child abuse is made or raised. The *Child and Family Services Act* requires that every person who suspects on reasonable grounds that a child is in need of protection must report that suspicion to a children's aid society. (Refer to Chapter IV, the section on the *Child and Family Services Act*, for detailed information on this obligation.) These reporting requirements are legally mandated, and are not discretionary.

If the organization is in doubt with respect to the appropriate response in a particular circumstance, it should contact the children's aid society and/or the police and seek guidance.

Infractions

Some incidents do not reach the reporting threshold; that is, there may be breaches of policy, infractions of rules, the disregarding of guidelines, etc., where no act of actual sexual impropriety is alleged or suspected. While there may be no need in these cases to report sexual abuse, the protective measures created by the organization to prevent the occurrence of sexual abuse must still be respected and enforced. If this isn't done, those measures will be ineffective, and will likely be disregarded. Moreover, exposure to legal liability is likely to increase where an organization ignores its own internal rules and policies. An organization should therefore determine, in advance, what its response would be for such breaches. This should include consideration of when and what level of discipline will be imposed—for what infractions, after the first infraction, or after a series of them, etc.

If discipline is imposed, the reasons for its imposition should be made clear to the person being disciplined; imposition of the discipline should be done in a fair and open manner while

respecting confidentiality; the person being disciplined should have an opportunity to respond to the allegations in a manner that is perceived to be fair; and the entire disciplinary process should be well documented.

A range of penalties may be applicable depending on the circumstances, from a verbal reminder or admonition, to written warnings, suspension, up to, and including, dismissal. When determining the appropriate sanction in any given circumstance, the following principles should guide an organization's actions:

- *the severity of the penalty must be appropriate to the seriousness of the infraction;*
- *penalties for repeat offences should be greater than for the previous offence; and*
- *penalties should be applied consistently in all cases of similar offences.*

Complaints Requiring External Reporting

Information about possible sexual abuse may come to the attention of individuals in an organization in a number of ways. These include: a direct report from the person experiencing the abuse; an indirect report from another person who suspects that abuse is occurring; or some other means such as rumours, observations, or behavioural signals.

Experts suggest that there are physical and behavioural signs that a child is being or has been sexually abused, even if children, in general, often do not disclose the fact. The following list is not exhaustive, and includes signs that, if they exist, are more likely to be observed in a sport organization than in many other settings. In addition, some of the signs may indicate that a child is in need of protection, but not necessarily because of sexual abuse.

Behavioural Signs in a Young Child:

- sexual knowledge or language that is inappropriate for the child's age or development
- an unusual interest in, or preoccupation with, sexual matters
- hints about sexual activity through actions or comments that are inappropriate to the child's age or developmental level
- inappropriate sexual play or behaviour with him or herself or dolls, toys or other children
- art that shows abuse
- excessive masturbation
- persistent urinating or defecating in clothes
- regressive behaviour, for example, baby talk, thumb sucking
- fear or avoidance of any aspect of sexuality
- sexually suggestive behaviour with adults or older children
- consistent psychosomatic complaints or frequent depression
- poor social boundaries
- starting fires or a fascination with fire.

Behavioural Signs in an Older Child:

- sexual knowledge or language that is inappropriate for the child's age or development
- hints about abusive sexual activity through actions or comments
- sexually suggestive behaviour with adults or older children
- consistent psychosomatic complaints or frequent depression
- difficulty concentrating, and being withdrawn and/or overly obedient
- being seemingly accident-prone
- poor social boundaries

- starting fires or a fascination with fire
- running away
- promiscuity or prostitution
- refusing to undress for gym and/or often wearing layers of clothing
- creating stories, poems, or artwork about abuse
- suicidal feelings or attempts at suicide
- destroying property, hurting or mutilating animals

Physical Signs of Sexual Abuse:

- bruising, bleeding, swelling, tears or cuts on genitals or anus
- an unusual vaginal odour or discharge
- torn, stained, or bloody clothing, especially underwear
- pain or itching in genital area, difficulty going to the bathroom, walking or sitting
- sexually transmitted disease, especially in a pre-adolescent child
- pregnancy

If, on the basis of one or more of these signs, it appears that the reporting threshold has been reached, there are four key things for organizations to remember. They are:

1. The person, including a professional, who suspects on reasonable grounds that a child is or may be in need of protection must:
 - make a report directly to the children's aid society;
 - not rely on any other person to report on his or her behalf; and
 - make the report promptly.

He or she should also advise the sport organization.

2. The organization should seek legal advice about issues such as those relating to labour relations.
3. Organizations should not do anything that might jeopardize any children's aid society or police investigation. This means in particular that the organization should defer an internal investigation of the matter pending completion of any external investigation. It may also mean that any disciplinary measures that an organization wishes to take may need to be deferred until that time.
4. The organization should consider the best way to protect the child. This may mean separating the individual alleged to have carried out the abuse from the organization, at least temporarily, pending the outcome of the external process.

An organization that has considered in advance the possibility that such a situation might arise, and laid out the steps that it will follow in such circumstances, will be in a much better position to deal with the inevitable distress, probable confusion, and possible publicity that will exist at the time sexual abuse is disclosed or suspected. A well-prepared organization will be able to navigate this very difficult time more clearly, carefully, and effectively.

A Suggested Process

An organization may wish to consider a version of the following process to follow in the event of such circumstances. This section suggests action steps for organizations. Note, however, that with respect to the duty to report, the person who has reasonable grounds to suspect that a child is or may be in need of protection must, personally, make a report to the children's

aid society. This person should also advise the sport organization.

1. If a child discloses an allegation of abuse, first and foremost comfort him or her, and ensure that the child is not frightened by the manner of response that he or she receives. However, do not promise the child that the matter will be kept secret. Listen carefully and make written notes as soon as possible after the disclosure. **Do not ask leading questions or attempt to investigate the incident.** Get the basic story, reassure the child of your support and understanding, and then take action. Do not conduct detailed interviews with the child. In particular, make every effort to avoid leading questions that might direct a child's answers. Let the child tell what happened by asking non-leading, non-directive questions such as, "Do you want to tell me about it?" Directive questions have had the unintended effect of tainting evidence in court, have led, and could lead to a case against an alleged abuser being lost.
2. Keep information confidential. Only those who absolutely need to know about the allegations or the disclosure should be told at this point.
3. Immediately report the matter to the children's aid society and where appropriate, to the local police. Ask the children's aid society and the police how to proceed with notification of the child's parents. Generally, if the initial disclosure from the child is made to the organization, the organization should alert that child's parents, guardian or caregivers, unless the allegations concern the involvement of parents or a parent in the abuse. In that case, do not alert those individuals.

If the person who has made the allegation is an adult, encourage him or her (personally) to call the children's aid society and where appropriate, the police. If, after hearing the allegation from an adult, you have reasonable grounds to suspect that a child is or may be in need of protection, you must personally report the allegation promptly to a children's aid society, and where appropriate, the police.

4. Do not notify the individual against whom an allegation has been made, regardless of who that person is. Leave this to the police.

Once the organization confirms that the individual has been contacted by the children's aid society and where appropriate, the police, and where the allegations involve an employee, member of, or volunteer with the organization, the organization should consider suspending that individual, pending the outcome of the investigation. Having a policy about such suspensions in place in advance is imperative. It is unfair to make up such policies on the spot, in reaction to a difficult situation, and retroactive policies never communicated to members or staff would not likely be recognized as legitimate by a court. Imposing such suspensions may be perceived as unfair; nevertheless, the organization's first responsibility is to the children involved in its programs, and it cannot afford to expose those children to the person against whom the allegation is made while such an allegation is outstanding.

5. Make decisions as soon as possible concerning any communications that will be made regarding the allegations. If not already notified, make those in charge of the organization aware of the allegations right away. Also inform others within the

organization of the circumstances in order to implement any suspension given and to ensure the continuation of the affected programs. An organization will have to decide how to deal with rumour and innuendo that often circulates in such situations. Parents may demand to know particulars; other children may be curious about what happened to their coach; etc. Furthermore, an important principle in our legal system is that a person is innocent until proven guilty. An organization will need to balance these competing interests very carefully in determining what information, if any, is provided to those outside the circle of those who need to know for purposes of dealing with the incident and providing care for the child. Legal assistance may be invaluable in these circumstances.

In some circumstances the media may be involved. Decide in advance who will speak to the media and designate a single spokesperson. Determine in advance what will be said, and under what circumstances. Consult with the organization's lawyer, the police and the children's aid society if possible, in order to be sure about the legality of making certain information public.

Privacy, especially that of the child and his or her family, is the overriding issue to consider when determining what to say to the media. Also consider that the official investigation into the incident might be compromised by the unintentional release of information that should be kept confidential. In addition, the allegations may prove unfounded, and imprudent disclosure of the name of the alleged offender could have very serious repercussions, including legal repercussions, on the organization and the individuals involved.

6. Assist the official investigation.
7. Take appropriate follow-up action after the completion of the official investigation. If the allegations are ultimately substantiated, the organization may need to take steps to ensure that the abuser is no longer associated with the organization.

Organizational policies, such as the sample policy statement shown below, should be reviewed by an organization's own legal counsel prior to implementing:

"The organization may suspend any person charged with a provincial or federal offence, pending the disposition of the charge, if the offence is related to the position the individual holds. If convicted of a charge, individuals may be dismissed by the organization if there are reasonable grounds to believe that this individual poses a significant risk to children, or others, in the organization."

8. Help the organization and its members heal. Suspicions, allegations and disclosures of child abuse usually spread quickly, and they can be very damaging to the organization's community. Similarly, those individuals accused of child sexual abuse who are later exonerated can also face serious situations. If the individual remains in the organization, the organization should deal with this issue, and try to minimize the damage to that person's reputation.

Even more devastating is the situation where the allegations are substantiated. The repercussions in such circumstances will be tremendous—everyone involved with the organization is likely to be profoundly affected. Feelings of betrayal, anger, grief, fear, and guilt often accompany the exposure of sexual abuse within a community. Provide

support to assist people to deal with these feelings, including those in charge, who will have been subjected to tremendous stress themselves. The organization will therefore likely need to call on expert resources in the community to help members come to terms with what happened. Knowing in advance who they are and how to access those services is critical.

9. Review the organization's risk assessment and risk management activities and revise them where necessary. Even when an organization has done everything it reasonably could have done to protect children from sexual abuse, bad things can still happen. Nevertheless, review and analyse the organization's risk assessment and risk management activities to see if there is anything it could have or should have been done differently, or should be done differently in the future. Revise what seems to be necessary.
10. Redouble the organization's awareness-building and education efforts around sexual abuse. Take this opportunity to help the community learn about sexual abuse and how to prevent it.

Unfortunately, the sexual abuse of children can and does happen anywhere, in any organization or institution—including the home—where there are children. It can happen even when an organization has diligently taken every reasonable effort to minimize the risks of it. No organization can ignore its obligation to the children in its care to take all reasonable measures to protect them from an unreasonable risk of harm.

This Handbook has been prepared with the intent to assist sport organizations of all types, sizes, and levels of resources to make that worthwhile effort, to the best of their abilities. Some organizations, upon reading this Handbook, may realize that much of the

The consequences of failing to adequately address the issue are too serious—both to the child or children victimized, and to the organization—to ignore.

groundwork described remains to be done. That can seem a daunting task. It is, however, a necessary one—and one with ancillary benefits that can greatly assist an organization to better understand itself and its people and processes. The consequences of failing to adequately address the issue are


too serious—both to the child or children victimized, and to the organization—to ignore. A child can be negatively affected for life. An organization can be shaken to its core, and required to face potentially huge liability claims.

It is hoped, and expected, that most organizations will never have to live through the devastating circumstances of the revelation of sexual abuse within their midst. By following the guidelines outlined in this Handbook, a sport organization should be much less likely to have

to do so. And if, despite its best efforts, an organization does find itself in such a situation, it will have the knowledge and wherewithal to deal with it in an informed, sensitive, and responsible fashion.

It is hoped that the moral imperative is sufficiently persuasive to spur to action organizations that still have work to do in this area. The legal imperative, both civil and criminal, provides the necessary incentive to those who might otherwise be hesitant to respond to the risks involved. The law takes the sexual abuse of children seriously, will punish perpetrators—those who knew or ought to have known that it was occurring, and those who should have done something about it—and will compensate those victims of such abuse where appropriate. It is very important in such circumstances that an organization be able to point to its well-documented, enforced, and duly implemented risk assessment and management activities, and to its well-publicized principles, policies, and procedures, to show that it has taken responsibility for the safety of the children in its care, and that it has done everything reasonably possible to avoid harm to them from sexual abuse by someone involved with the organization.

The essence of prevention is the identification, evaluation, and management of risk. The risk that the sexual abuse of children might occur is real. The risk that it might occur within a particular organization depends to a large extent on factors specific to each organization, and on the measures in place to avoid or reduce it. This Handbook can be used as a resource to guide an organization through the various phases of identifying risks, assessing their magnitude, and responding with the proper selection and implementation of strategies to



control such risks. The importance of such an exercise cannot be overemphasized.

An organization should not be intimidated by what is required to ensure the safety of the children in its care. The steps outlined in this Handbook can be carried out internally, without significant cost, if those in charge of the organization and those who participate in it are committed to the project and are prepared to

devote some thought, energy, and time to it. There are also a number of resources available to assist organizations in this area. Local volunteer centres, police services, children's aid societies, sexual abuse programs, and even boards of education, may be valuable resources.

The bottom line is the safety of the children in your care. They are worth the time and trouble necessary to protect them.

Appendix A

Duty to Report Under *The Child and Family Services Act*

1. SINGLE DUTY TO REPORT FOR PROFESSIONALS AND THE PUBLIC

The new amendments replace the previous duty to report with a single duty to report for both the public and professionals. The threshold is now “reasonable grounds to suspect,” which is lower than the previous threshold for the general duty to report (“believe on reasonable grounds”) and the same as the previous threshold for the duty to report for professionals.

PREVIOUS LEGISLATION	NEW AMENDMENTS*
<p>72(1) In this section and in sections 73, 74 and 75,</p> <p>“to suffer abuse,” when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h).</p>	<p>72(1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:</p> <p>The list of what must be reported is set out in detail in the chart on the definition of a child in need of protection below.</p>
<p>72(2) A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society.</p>	
<p>72(3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her 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 on which it is based to a society.</p>	

* The changes are marked in bold

2. AMENDMENTS TO THE DEFINITION OF A CHILD IN NEED OF PROTECTION

A revised section 72 details reporting requirements. These reflect the amendments to subsection 37(2), which sets out situations in which a child is said to be “in need of protection.” These new situations differ from those under the former provisions in the following ways:

- The threshold for the risk of harm to a child is lowered from “substantial risk” to “risk that the child is likely to suffer” in order to allow earlier intervention to protect children (see paragraphs 2, 4, 8, and 9 below);
- The words “pattern of neglect” are included in the physical harm, risk of physical harm, emotional harm, and risk of emotional harm sections for the first time (see paragraphs 1, 2, 6, and 8 below);
- The threshold for emotional harm is lowered from “severe” to “serious” and the symptom of “delayed development” added (see paragraphs 6 and 7 below); and
- Emotional harm is linked to the conduct of the person having charge of the child for the first time (see paragraphs 6 and 8 below).

Should you have any questions on the duty to report, please contact your local children’s aid society.

PREVIOUS LEGISLATION	NEW AMENDMENTS*
<p>37(2) A child is in need of protection where,</p> <p>(a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person’s failure to care and provide for or supervise and protect the child adequately;</p>	<p>72(1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:</p> <ol style="list-style-type: none"> 1. the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person’s, <ol style="list-style-type: none"> i) failure to adequately care for, provide for, supervise or protect the child; or ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

* The changes are marked in bold

<p>37(2)(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);</p>	<p>2. there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's</p> <ul style="list-style-type: none"> i) failure to adequately care for, provide for, supervise or protect the child; or ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
<p>37(2)(c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;</p>	<p>3. unchanged</p>
<p>37(2)(d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in clause (c);</p>	<p>4. there is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3;</p>
<p>37(2)(e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;</p>	<p>5. unchanged</p>
<p>37(2)(f) the child has suffered emotional harm, demonstrated by severe,</p> <ul style="list-style-type: none"> i) anxiety, ii) depression, iii) withdrawal, or iv) self-destructive or aggressive behaviour, <p>and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;</p> <p>* The changes are marked in bold</p>	<p>6. the child has suffered emotional harm, demonstrated by serious,</p> <ul style="list-style-type: none"> i) anxiety, ii) depression, iii) withdrawal, iv) self-destructive or aggressive behaviour, or v) delayed development, <p>and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;</p>

	<p>7. the child has suffered emotional harm of the kind described in subparagraph (i), (ii), (iii), (iv), or (v) of paragraph 6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;</p>
<p>37(2)(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;</p>	<p>8. there is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph (i), (ii), (iii), (iv), or (v) of paragraph 6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;</p> <p>9. there is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph (i), (ii), (iii), (iv), or (v) of paragraph 6 and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm.</p>
<p>37(2)(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;</p>	<p>10. unchanged</p>

* The changes are marked in bold

37(2)(i)	the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;	11. unchanged
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37(2)(j)	the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;	12. unchanged
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37(2)(k)	the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or	13. unchanged
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37(2)(l)	the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part.	NO LONGER DUTY TO REPORT
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* **The changes are marked in bold**

3 NEW PROVISION RE ONGOING DUTY TO REPORT

The new legislation also provides 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.

PREVIOUS LEGISLATION

NEW AMENDMENTS*

72(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if he or she has made previous reports with respect to the same child.

4. NEW PROVISION ON THE DUTY TO REPORT DIRECTLY

The new legislation makes 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.

PREVIOUS LEGISLATION

NEW AMENDMENTS*

72(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on his or her behalf.

* The changes are marked in bold

5. WHO IS A PROFESSIONAL?

There is no change in the definition of a professional in the new amendments. A professional includes:

- health care professionals, including physicians, nurses, dentists, pharmacists and psychologists;
- teachers and school principals;
- social workers and family counsellors;
- priests, rabbis and other members of the clergy;
- operators or employees of day nurseries;
- youth and recreation workers, but not volunteers;
- peace officers and coroners;
- solicitors; and
- service providers and employees of service providers.

6. EXPANDED PENALTY FOR PROFESSIONALS FOR FAILURE TO REPORT

Under the previous provisions of the *Child and Family Services Act*, the failure of a professional, in the course of his or her professional or official duties, to report reasonable grounds to suspect abuse (5 of the grounds for protection set out in subsection 37(2)) was an offence. The maximum penalty was a fine of up to \$1,000.

The new amendments provide that professionals are subject to a fine (of up to \$1,000) if they fail to report reasonable grounds to suspect that a child is or may be in need of protection (all of the grounds for protection, not just the six which constitute abuse). The maximum penalty will not change.

As is the case under the previous provisions of the *Child and Family Services Act*, failure to report by the public is not an offence.

		NEW AMENDMENTS*
85(1)	<p>A person who contravenes, (b) subsection 72 (3) (reporting child abuse);</p> <p>and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or, except in the case of a contravention of subsection 72(3), to imprisonment for a term of not more than one year, or to both.</p>	<p>72(4) A person referred to in subsection (5) is guilty of an offence if, (a) he or she contravenes subsection (1) or (2) by not reporting a suspicion; and (b) the information on which it was based was obtained in the course of his or her professional or official duties.</p> <p>72(6.1) A director, officer or employee of a corporation who authorizes, permits or concurs in a contravention of an offence under subsection (4) by an employee of the corporation is guilty of an offence.</p> <p>72(6.2) A person convicted of an offence under subsection (4) or (6.1) is liable to a fine of not more than \$1,000.</p>
* The changes are marked in bold		

7. LEGAL PROTECTION FOR PEOPLE WHO MAKE A REPORT TO A CHILDREN'S AID SOCIETY

The new amendments do not make any changes to the legal protection for people who make a report to a children's aid society. For more detailed information on legal protection, please see the section on the duty to report in Part IV of the Guide.

Endnotes

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- vi Sobsey, Dick. (1995). Violence against Children with Disabilities: An Overview. *Connection, 4, Summer 1995*. Toronto: Institute for the Prevention of Child Abuse, pp.1-5
- vii B.C. Ministry of Health (1991). *Dimensions of Multiple Victim Child Sexual Harassment and Abuse in British Columbia, 1985-1989, and Community Mental Health Interventions. A Study by Child and Youth Mental Health Services*. British Columbia Ministry of Health, p. 4
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- xii Mathews, F. (1987). *Adolescent Sex Offenders: A Needs Study*. Toronto: Central Youth Services, p. 1
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