

# Duties to report and protection when reporting

## 1. Duty to report if a child is in need of protection

Section 14 of the Child, Family and Community Service Act (CFCSA) states that if a counsellor has reason to believe that a child under 19 years of age has been, or is likely to be, physically harmed, sexually abused or sexually exploited, or is otherwise in need of protection, the counsellor is required to report this to the appropriate authorities. (The appropriate authorities would usually be MCF or the police.) A child harming, or at risk of harming, themselves is included under this provision.

If the counsellor's knowledge of possible harm is indirect (for example, a client has told the counsellor about the situation involving a child) it is best to encourage the person with the most immediate evidence of risk to act on their duty to report. However, if that person is unwilling to do so, the duty to report devolves to the counsellor.

The threshold of this duty is low. A counsellor is not expected to undertake a thorough risk assessment of the child; this will be done by the child protection authorities. The counsellor's duty is to simply report if a child is at risk or might be in need of protection.

A counsellor breaching client confidentiality to make a mandatory report is protected under both the CFCSA and the Personal Information Protection Act (PIPA) so long as such a report is not done for a malicious or improper purpose. Client consent is not required in order to act on this duty. Furthermore, under section 18(1)(o) of PIPA, the counsellor does not have to notify the affected client that the counsellor has breached client-confidentiality.

### **Duties to report and protection when reporting**

Summarizing information set out in the legal commentary [How Private Is Private?](#) Bryce, G, revised April 29, 2014.

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## 2. Duty to report if a child may self-harm

A counsellor is also required under the CFCSA to report severe self-destructive or aggressive behavior to the child protection authorities. There are no exceptions to this requirement.

However, an initial report can be made anonymously in order to discuss the client's situation without breaching confidentiality.

It may then be determined whether the counsellor is best placed to help the child, and prevent the child from putting his or her own life at risk, or if confidentiality needs to be broken and other persons or agencies involved.

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## 3. No duty to report if an adult may self-harm, but protected if a report is made

Unlike the situation for children, there is no legal duty at common law or in a BC statute that requires a counsellor to report the self-harm or potential self-harm (e.g. suicide) of an adult client. (If an adult's threat of self-harm might involve others, particularly children, then the focus of duty becomes protecting those others.)

However, if a counsellor reasonably believes that an adult's suicide or serious self-harm is imminent, the counsellor would be legally protected under section 18(1)(k) of PIPA if they reported this to the authorities without malicious intent. After such a report has been made, 18(1)(k) of PIPA requires the counsellor to notify the client whose personal information has been disclosed in that report by mailing a notice to the client.

This notification requirement, of course, can act as a deterrent for a counsellor considering whether to report an adult client whom they believe likely to self-harm.



#### 4. Authority to report if a vulnerable adult has been abused

Section 46 of Adult Guardianship Act (AGA) provides that anyone with information indicating that a vulnerable adult has been abused or neglected (where that adult is unable to seek their own support and assistance) may report that abuse and do so without fear of sanction. Therefore, a counsellor should feel free to report such situations to the authorities.

It is important to understand that the AGA does not state there is a legal duty to report. Instead, the AGA gives a counsellor the authority to breach client confidentiality in defined circumstances.

A duty to report the abuse or neglect of a vulnerable adult could be implied from the wording of the AGA as a whole. However, to date, the courts have not yet recognized such a duty. Even so, a counsellor with reason to suspect that a vulnerable adult has been abused or neglected is best advised, *prima facie*, to either report that abuse or satisfy themselves that someone else has reported the abuse.

Again, a counsellor is not expected to undertake a thorough risk assessment of the vulnerable adult's circumstances; this will be done by the appropriate authorities. The counsellor is simply authorised to report.

Client consent need not be obtained in order to make such a report. A counsellor is protected under both the AGA and the PIPA in breaching client confidentiality in order to make a report so long as it is not for malicious or improper purpose. Under section 18(1)(o) of PIPA, the counsellor does not have to notify the affected client that the counsellor has breached client-confidentiality.

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## 5. Duty to report or warn if an adult is under an imminent risk of serious harm

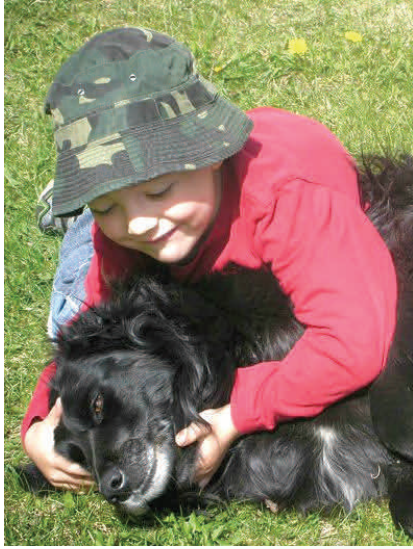
Popularly known as “Tarasoff warnings”, from the landmark 1999 case of *Smith v. Jones*, the Supreme Court of Canada found that a health professional like a counsellor has a common law duty to report to the authorities (or warn a third party at risk) if the counsellor has a reasonable ground to believe that an adult is facing an imminent risk of serious harm or death. (A similar risk of harm to a child would be covered under the first duty to report, as discussed in Section 1, above.)

Unlike when reporting a child in need of protection, or reporting the abuse or neglect of a vulnerable adult, there is no statutory authority who will step in and undertake a risk assessment in response to a Tarasoff warning.

The counsellor’s own risk assessment is likely to be the primary triggering event for intervention. Therefore, a counsellor contemplating a Tarasoff warning should consider all circumstances relevant to the situation, and carefully assess the risk to the best of their ability, before breaching an adult client’s confidence.

A Tarasoff warning is covered under section 18(1)(o) of PIPA, and warnings given under section 18(1)(o) need not be accompanied by a subsequent notice of disclosure to the client. In other words, a counsellor giving a warning or notice to the authorities because they have a justifiable belief that a non-vulnerable adult is at imminent risk of serious harm or death because of a client’s meaningful threat is not required to inform the client that they have done so.

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## 6. No duty to report abuse of an animal but...

Counsellors do not have a legal duty to report the abuse of an animal. Veterinarians are the only profession that holds such a duty.

If a counsellor knows of the abuse of an animal, involving a veterinarian in the situation should result in the abuse being reported. However, in practice, it is unlikely that will be an easy thing to do.

If a child or vulnerable adult shares accommodation with the abuser, then a counsellor should pay serious attention to the possibility that abuse will transfer to harm the child or vulnerable adult. Where such a possibility exists, the counsellor may find that the reporting requirements described in Topics 1 or 4 (above) have been met. A counsellor would be protected in such situations.

The College of Physician and Surgeons of BC views animal abuse by a child as an indirect sign of possible sexual abuse and advises that it triggers a physician's duty to report a child in need of protection. Similarly, a counsellor who knows a child has abused an animal can take this as grounds for making a report to the child protection authorities. Again, a counsellor would be protected in such situations.

Animal abuse is prohibited by both BC regulatory and Canadian criminal law. Although, as noted above, counsellors do not have an explicit legal duty to report the abuse of an animal, a counsellor who files a complaint with the police in good faith should be protected from civil action.

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## 7. Working outside BC (Region 0)

### Sections 1, 2, and 4

A counsellor's duty to report to the authorities when a child is in need of protection or may self-harm (sections 1 and 2 above) and a counsellor's duty to report to the authorities when a vulnerable adult is in need of protection (section 4 above) are substantially the same across all Canadian jurisdictions. Even so, a counsellor working outside BC should be aware that there may be regional differences in provincial legislation setting out the duties described in sections 1, 2, and 4. Counsellors working outside BC are, therefore, advised to do the necessary research to better understand how these duties are framed in the other provinces where they work.

### Section 3

The laws applicable to reporting that an adult is threatening self-harm are also likely to vary across Canada. However, if a counsellor working outside of BC does make such a report to that province's authorities, the other province's privacy legislation is still likely to require that the counsellor notify the affected adult of the disclosure.

Faced with the possible need to report that an adult threatening self-harm, a counsellor working outside BC should do their own research to determine whether the other province has rules differing substantially from those set out in BC's PIPA.

### Section 5

The common law duty to report or warn when an adult is at an imminent risk of serious harm (a Tarasoff warning), as found in the Supreme Court of Canada's case of *Smith v. Jones*, is the same across all of Canada.

### Section 6

The veterinary duty to report animal abuse is found in BC legislation and applies only to BC licensed veterinarians. However, other provincial legislation may also speak to the need to report abuse of animals. This, too, is something a counsellor working outside BC should research for themselves if the issue arises.