

Reporting to youth protection and requests for information made by authorized personnel

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INTRODUCTION

The amendments made recently to the *Youth Protection Act*¹ give us reason to examine, in this ethics guideline, two issues that are always current for psychologists: reporting to Youth Protection (YP) and requests for information addressed to psychologists by YP personnel. Psychologists are frequently asked to assess whether the development or security of a child under 18 can be considered endangered. Further, when a report is made to YP, a psychologist may be asked to provide information about the child or its parents even if the psychologist was not the author of the report.

Although psychologists must refer to the Act in exercising their professional judgment, the exact meaning of its wording is not necessarily clear. Given this fact, the clarifications provided below are all the more pertinent.

SOME CLARIFICATIONS

I. DUTY TO REPORT

The duty to report is set out in section 39 of the *Youth Protection Act*. This duty arises as soon as a professional has reasonable grounds to believe that a child's security or development is or may be considered endangered:

Every professional who, by the very nature of his profession, provides care or any other

form of assistance to children and who, in the practice of his profession, has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger within the meaning of section 38 or 38.1, must bring the situation to the attention of the director without delay. The same obligation is incumbent upon any employee of an institution, any teacher [...].

This excerpt from the Act raises two important questions, which we will attempt to answer. What constitutes *reasonable grounds to believe*, and what is a *situation* that endangers a child's security or development?

1) Reasonable Grounds

It is important to note that the duty to report exists despite the ethical requirement to preserve professional secrecy prescribed by the *Code of Ethics*², the *Professional Code* (sec. 60.4) and the *Charter of Human Rights and Freedoms* (sec. 9). Protection of the child also overrides the professional's legitimate desire to safeguard the therapeutic relationship or to maintain the relationship of trust. In view of the above, the notion of *reasonable grounds* is one that needs to be clearly understood.

In the expression "reasonable grounds," the meaning of the word "grounds" does not pose any difficulty. The grounds are the reasons

why a person takes action. In relation to reporting, the grounds stem from information obtained by the psychologist – facts reported to him directly during an intervention, a situation observed by him personally or information passed on by other persons in his professional environment – indicating that certain acts have been committed and permitting identification of the persons concerned and/or the circumstances, such as time, place and context. For example, a client in a therapy session may tell a psychologist that her daughter was recently abused by a neighbour. The psychologist should question the patient to establish what happened and who was involved, to determine whether grounds exist for reporting to YP. But the decision to report is not always made in a context where the psychologist can personally assess the revealed information, as in the above example. The psychologist may be told certain facts about a child and on that basis, decide that grounds exist for making a report. For example, a teacher may tell the psychologist that a child has made some disturbing comments and appears to have injuries on her arm or face. In this situation, the teacher would normally make the report. The psychologist should inform her about her obligation and, if necessary, support her in the process.

The meaning of the word "reasonable" is more difficult to pinpoint. Generally, this adjective implies rationality, reason, common sense and moderation. The courts and legal texts use the word "reasonable" frequently, in a variety of contexts. It is used to describe what is socially acceptable. The term "reasonable accommodation," used by the Commission des droits de la personne et de la jeunesse to permit, in certain problem situations, the exercise of a right pursuant to the Charter, means a practice that is accepted or generally acceptable. In other words, it refers to conduct that could be considered moderate or appropriate in the given circumstances.

To qualify "grounds" as "reasonable" under the Act, we can look at the degree of belief felt by the psychologist that such grounds exist, considering what is normally regarded

as appropriate conduct in the given situation. It is important to remember that, although the Act imposes the obligation to report promptly – the section of the Act cited above states that it must be done "without delay" – there is no obligation for the psychologist to check the veracity of information in order to ensure its accuracy. The courts have repeatedly held that it is not the professional's responsibility to investigate a situation brought to his attention.

To illustrate the degree of belief implied in the notion of "reasonable grounds," let us look at a concrete example. An elementary school principal learned from the mother of one of his students that the owner of a neighbouring daycare was abusing the children under his care. The mother said that she obtained this information from several other parents. The principal decided that he would no longer inform parents about the existence of this daycare or refer any children to it. However, he refused to personally report the situation. A tribunal³ had to make a judgment on this omission and it determined that the principal should have made a report. The fact that he had decided to stop referring parents to the daycare showed, in the eyes of the tribunal, that he gave credence to the mother's statements. Therefore, he had the belief that something had happened. This constituted reasonable grounds within the meaning of section 39.

This decision shows that section 39 creates a general obligation. It is not the professional's role to arbitrate the reasonableness of the grounds for reporting. Neither should he assume that the report will be made by another party. The responsibility for investigating the matter and taking action, if intervention is required, falls to the Youth Protection Office.

The viewpoint reflected in the tribunal's decision on the principal's conduct, and another decision, rendered in 1998, concerning a psychologist working in a youth centre⁴, tends to reduce the professional's discretionary power in deciding whether to report, so long as reasonable grounds exist. To date, the decisions made by various tribunals have

tended in this direction. However, knowledge of facts does not exclude all other considerations. Simple suspicion is, obviously, not enough. While it is not required for the professional to believe that the events necessarily took place, he must, nevertheless, have information that can reasonably justify a request for investigation by YP. In 2006, the Supreme Court of Canada made it clear that while "it is important that suspected child abuse be promptly reported [...] it is also important that persons in positions of authority [...] act responsibly and avoid unfounded and damaging reports of suspicion⁵."

2) The situation endangering the security or development of the child

The term "situation" refers to the circumstances described in sections 38 and 38.1 of the *Youth Protection Act*. Section 38 describes the situations in which the security or development of the child is considered to be in danger. Obviously, these include the most serious situations: abandonment of the child, negligence, psychological mistreatment, physical or sexual abuse and serious behavioural disturbances. Section 38.1 describes some additional situations, including running away and school absenteeism, which may, in certain circumstances, endanger the child's security or development.

When YP receives a report, it may take into account a number of factors, such as the nature and seriousness of the acts committed, the age and personal characteristics of the child, the ability and willingness of the parents to put a stop to the situation, and the community resources⁶.

In cases of doubt about the need to report, the psychologist should inquire at the Youth Protection Office.

II. REQUESTS FOR INFORMATION MADE BY AUTHORIZED PERSONNEL AND CONSULTATION OF RECORDS

Once a report is made, the Director, or the person authorized by him, can investigate all matters coming under his jurisdiction⁷. In the course of performing these duties, the YP staff may contact the psychologist.

1) Information requests and professional secrecy

The Director of Youth Protection or the person he authorizes to conduct the investigation, does not, in contrast to the courts, have the power to compel persons to respond. Outside the duty to report the facts giving grounds to believe that a child's security or development may be in danger, the professional remains bound by his obligation to preserve professional secrecy.

In other words, the duty to report does not imply that a psychologist is relieved of all obligations to his client(s). The facts creating the grounds for the report and permitting the YP to proceed must be provided. However, the professional who makes the report is not obliged to disclose all information received from his client. A Supreme Court decision, *Smith v. Jones*, asserts that when the law gives someone the authority to interfere with a professional's obligation of confidentiality, the decision to do so and the choice of means for exercising this authority should be determined with a view to not interfere with it "except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation."

Reporting does not imply granting access to the professional's record. This access is protected by professional secrecy. However, it is important to note that certain provisions of the *Act respecting health services and social services* are modulated by the provisions of the *Youth Protection Act*.

2) Consultation of the records

The amendments made to the *Youth Protection Act* (in particular, sections 35.4 and 36) broaden the cases permitting consultation and simplify the procedures for access to the records of institutions in the health and social services network. Only the records of CLSCs, hospitals, child and youth protection centres, residential and extended care centres and rehabilitation centres are covered by these sections. These provisions do not affect the records of professionals in private practice or those who practice in other settings, such as schools.

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Under the new section 35.4, on the request of the Director of Youth Protection or a member of his staff, an institution must provide information contained in the record of any person. This may be a person involved in a report, but not necessarily. It should be noted, however, that two conditions apply: one, the information must make it possible to reveal or confirm the existence of a situation related to the grounds of the report made to the Director and two, knowledge of the information must make it possible to decide whether to accept the report for evaluation or decide whether the security or development of a child is endangered.

Section 36 states that YP may consult and make copies of the child's record, held in the institution, when it deems that such consultation is necessary to ensure the child's

protection. However, section 36.1 specifies that the Director or the person who wishes to consult and copy the record must, when requested, "identify himself and produce a certificate of his capacity." It is up to the psychologist involved to clarify the situation as necessary.

YP may also, although only after obtaining permission from the tribunal, consult the record of the parents and any party involved in a report if such consultation is necessary to assess the child's situation⁸. Unless he is given a copy of this legal authorization, the psychologist employed in an institution in the health network will have to obtain the consent of the parents of a child who is the subject of a report if information about them is requested by the Director of Youth Protection or a person representing him.

REFERENCES

1. R.S.Q. c. P-34.1, amended by 2006 S.Q. c. 34 (Bill 125), enacted on June 15, 2006.
2. Section 38 of the 1983 Code of Ethics and section 15 of the new 2006 Code, currently in press.
3. *Commission scolaire Baldwin-Cartier v. Commission de protection des droits de la jeunesse*, C.S. Montréal 500-05-011419-908, December 7, 1990 (J.E. 91-338).
4. *Protection de la jeunesse – 1005*, C.Q. (Quebec), 200-41-001829-985, September 14, 1998 (J.E. 99-1479).
5. *Young v. Bella* [2006] 1 S.C.R. 108, (paragraph 2).
6. Section 38.2. This new section was enacted under Bill 125, which amends the *Youth Protection Act*. It simply lists the criteria already recognized by social practice and the tribunals.
7. Section 35.1.
8. [1999] 1 S.C.R. 455, 475-476, paragraph 49.
9. The section presently in force already provides for consultation of the files of parents or other parties if legal authorization is given, but only in certain situations and under stricter conditions. These conditions will no longer apply upon the implementation of Bill 125.

BIBLIOGRAPHY

- Act respecting health services and social services*, R.S.Q. c. S-4.2.
- Boulais, Jean-François, *Loi sur la protection de la jeunesse, texte annoté*, (5th edition), Montreal, 2003, Société québécoise d'information juridique.
- Charter of Human Rights and Freedoms*, R.S.Q. c. C-12.
- Code of Ethics of Psychologists*, R.S.Q. c. C-26, r.148.1.
- Code of Ethics of Psychologists*, 2006. (in press).
- Professional Code*, R.S.Q. c. C-26, sec. 60.4.
- Smith v. Jones*. [1999] 1 S.C.R. 455, 475-476.
- Young v. Bella*, [2006] 1 S.C.R. 108.
- Youth Protection Act*, R.S.Q. c. P-34.1, amended by 2006 S.Q. c. 34 (Bill 125), enacted on June 15, 2006.



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