

## THE DUTY OF REASONABLENESS REGARDING THE OBLIGATION TO REPORT SUSPECTED CHILD ABUSE

By Ken Nathens  
Nathens, Siegel Barristers LLP<sup>1</sup>

Section 72 of the Ontario *Child and Family Services Act* (CFSA) requires the reporting of suspected child abuse to Children's Aid Societies by professionals working with children and ordinary citizens. This section provides in part :

“if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect (child abuse on an enumerated ground set out in section 72), the person shall forthwith report the suspicion and the information on which it is based to a society”

A professional working with children who fails to report suspected child abuse is subject to an offence. Section 72(7) of the CFSA provides that a professional who reports suspected child abuse has immunity from court action unless the person acts «maliciously or without reasonable grounds for suspicion. »

There have been few, if any, prior court cases in which parents have successfully sued an informant for reporting suspected child abuse to the Children's Aid Society.

Therefore, the recent Ontario Small Claims Court case of *Larabie v. Cui*<sup>2</sup> is of particular interest to Children's Aid Societies and professionals who work with children.

In this case, an unlicensed daycare provider reported to the Children's Aid Society her suspicion that a one year old enrolled in her daycare suffered from parental neglect. The daycare provider testified at trial that the concern was justified as the child lost 1% of his body weight during the time that the child was enrolled. The provider stated that the child slept more than other children in her care, albeit the child was also younger than the other children. She also expressed concern about the child's nutrition while in parental care.

Upon reviewing the facts of the case, Deputy Justice Richardson found no evidence that the child was ever in any danger. The child had normal ailments that most, if not all infants endure such as ear infections and occasional digestive issues. The evidence showed that the mother took good care of the child, regularly took the child to his physician, made special healthy meals for the child, and kept the daycare provider informed of the status of the child's health and nutritional needs. Further, at

---

<sup>1</sup> Ken Nathens is a partner in Nathens, Siegel Barristers LLP, a firm dedicated exclusively to the practice of family law located in Toronto and Mississauga Ontario.

<sup>2</sup> *Larabie v. Cui*, SC-13-26951-0000 (Deputy Justice Richardson)

no time while the child was enrolled in the daycare did the provider advise the parents of any concern for the child nor did she ever contact the child's doctor. The Children's Aid Society found no protection concerns after a brief visit with the parents and the child.

Deputy Justice Richardson determined that the daycare provider's report to the Children's Aid Society was caused by overreaction and panic. There was public pressure at the time on unlicensed daycare facilities caused by the recent death of a child in an unlicensed facility. Deputy Justice Richardson found that there was never any reasonable concern for the child or any sign of parental neglect. The daycare provider, by providing the report to the Children's Aid Society, appeared more interested in protecting herself than the child.

The Children's Aid Society's unnecessary involvement caused great distress to the parents. The parents were overwhelmed with shock when contacted by the Society. The mother suffered from guilt, tension and stress to the extent that medication was required to soothe her. Deputy Justice Richardson thus ordered that the daycare provider pay \$10,000 in damages to the parents.

The duty to report suspected child abuse is of vital importance for the protection of vulnerable children. The unique facts and results of this case act as a reminder, however, that the duty to report must be exercised only when there is a « reasonable ground to suspect » child abuse. Individuals, including professionals working with children, who make malicious or spurious allegations of child abuse, may be held responsible for damages.