# Child Protection Law, Notes, Reports, and Records

## LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Describe the general principles of the *Child, Youth and Family Services Act, 2017* (CYFSA).
- Explain the roles that social service workers may play in working with the CYFSA.
- Understand the duty to report neglect and abuse, and describe the triggering circumstances for that duty.
- Understand the general principles of safety and risk assessment.
- Describe the various levels of intervention mandated by the CYFSA and understand how a level is chosen.
- Be aware of contemporary issues in child protection, such as using community resources, advocacy on behalf of children, and cultural sensitivity.
- Understand the importance of note-taking in social service practice.
- Describe ways of improving the clarity and understandability of notes.
- Demonstrate an awareness of confidentiality concerns in making notes and writing reports about clients.
- Describe how your notes might be used in court.
- Understand the court process and your role as a social services worker at court.

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Introduction

Before the 18th century, protecting children was viewed as simply one facet of raising them and the responsibility of parents. While neglecting or harming one's children was often denounced as morally wrong, parents had the final word over how children were provided for, supervised, and disciplined. In extreme cases of abusive treatment, a relative might intervene, taking a child at risk into his or her own home, but the courts and the government were rarely involved.

Gradually, as the result of pressure from children's advocates—sometimes educators, clergy, or related organizations—the government began to set limits on parental decision-making authority. Nowadays, if a child is at risk from parental harm, the decision to remove the child from the nuclear family is generally made not by extended family members or neighbours, but by government agencies, and these agencies take responsibility for the care of children in need of protection.

At the time of writing, in Ontario, the Child and Family Services Act (CFSA) continues to govern the process for taking children in need of protection into custody and set standards for their care. It also creates a duty of care for all people to report evidence of suspected abuse or neglect of a child.

In December 2016, the Ontario legislature tabled Bill 89, Supporting Children, Youth and Families Act, 2017. In June 2017, the Act received royal assent. Bill 89 will repeal the CFSA and enact the Child, Youth and Family Services Act, 2017 (CYFSA) in its place on a day to be named by proclamation of the lieutenant governor. The sections of the new Act relating to 16- and 17-year-olds will be rolled out by the end of 2017, thereby amending the CFSA. The CFSA will be fully repealed in 2018. As such, references in this chapter are made to the CYFSA.

The new Act makes many commitments, such as moving toward a child-centred practice, acknowledging the voice of young people, and addressing systemic racism. As well, the new Act refers to First Nations, Inuit, and Métis children and young persons, and gives rights of notice and participation to a representative chosen by each of the child's or young person's bands and First Nations, Inuit, or Métis communities.

The terms society ward and Crown ward are no longer used. Instead, the new Act refers to children who are in interim society care and extended society care, respectively. The new Act does not refer to children being abandoned or to runaways. And the new Act speaks of bringing children to a place of safety, instead of being apprehended, and of dealing with matters, not dealing with children.

The CYFSA strengthens the voice of children and youth. As well, the new Act broadens the definitions to include First Nations, Inuit, and Métis children to ensure that more Indigenous children are provided specialized recognition within the child welfare system.

In 2016 the Katelynn Sampson inquest provided recommendations that included “Katelynn's principle,” which holds that the child should be at the centre of our child welfare system.

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welfare, justice, and education systems. In practice, that would mean children would be consulted directly on decisions affecting them. The CYFSA reflects some of the inquest’s recommendations, broadening the definition of a child’s best interests to include the child’s views and wishes (given due weight in accordance with the child’s age and maturity). Other highlights of the new Act include the following:

- Raising the age of protection from 16 to 18 to increase protection services for more vulnerable youth in unsafe living conditions, to support their education, and to reduce homelessness and human trafficking
- Making services more inclusive and culturally appropriate for all children and youth, including Indigenous and Black children and youth, to ensure every child receives the best possible support
- Putting a greater focus on early intervention, to help prevent children and families from reaching crisis situations at home
- Improving accountability and oversight of service providers, including children’s aid societies and licensed residential service providers, so that children and youth receive safe, consistent, and high-quality services across the province

Social service workers can be involved with child protection in a variety of ways. For example, those who work in recreation facilities, women’s shelters, hospitals, or other centres with child clients may be confronted with evidence of child abuse or neglect, which they will be required to report. Many social service workers also work with children who have already been taken into care, perhaps supporting foster parents or working in children’s residences. In these settings, social service workers may be required to support children or parents in accessing and using programs and services in the context of a plan of care. They may also help clients to prepare for hearings and other administrative processes.

**Purposes and Principles**

The most important purpose of the CYFSA, as expressed in section 1, is to promote the best interests, protection, and well-being of children.

This principle has remained the same as in the old Act.

The requirement that legislation be applied according to the best interests of the child is not unique to the CYFSA. This phrase is used in family law statutes as well, with respect to issues of custody and access. Best interests do not necessarily mean what the child wants, although a child’s wishes may be considered, particularly in the case of older children. The new Act attempts to strengthen the voice of the child and youth.

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Similar to the old legislation, the CYFSA imposes a duty of care on all people to report child abuse and neglect. It governs the process for taking abused children into custody and sets standards for their care. It also provides for counselling and other services for children and their families for the purpose of preventing abuse and neglect.

The additional purposes of the CYFSA (s 1(2)) are expanded to include the following:

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
   i. respects a child’s or young person’s need for continuity of care and for stable relationships within a family and cultural environment,
   ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
   iii. takes into account a child’s or young person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
   iv. takes into account a child’s or young person’s cultural and linguistic needs,
   v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
   vi. includes the participation of a child or young person, the child’s or young person’s parents and relatives and the members of the child’s or young person’s extended family and community, where appropriate.
4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

Much like the CFSA, the secondary purposes of the new CYFSA reflect strong support for the preservation of the family unit and a commitment to assisting children within the context of family relationships. Choosing the “least disruptive” course of action requires consideration of the child’s existing environment, including, in addition to the family unit, the community and educational setting and the physical environment.
The secondary purposes also recognize the importance of culture, religion, heritage, traditions, regional differences, and community values. To the extent possible, a child’s ties to these should be preserved even when the child is in need of assistance or protection. For example, a child in care should be given a chance to attend services at a place of worship for his or her own faith. Attempts are often made to place children with foster families who share their culture.

The needs of Indigenous children are specifically referenced in recognition of historical inequities and the tragedy of residential schools. First Nations, Métis, and Inuit children should receive, where possible, services from organizations that are managed and operated by their own community with respect for its heritage and traditions. This is a reversal of earlier government policy, which aimed to assimilate Indigenous children by taking them out of their homes and communities and placing them in residential schools. In those schools, children were stripped of their language and culture; many were also subjected to physical, emotional, or sexual abuse. The effects continue to be felt generations later.

**Approved Agencies and Children’s Aid Societies**

The CYFSA permits the government to provide services directly or to fund service providers to do so. Approved agencies are corporations that work as agents for the government in providing these services.

Children’s aid societies are specially designated approved agencies. There are more than 50 children’s aid societies in Ontario, most associated with municipalities. Many also receive funding from private sources. Because of its size and diversity, Toronto has four children’s aid societies:

- Catholic Children’s Aid Society of Toronto
- Children’s Aid Society of Toronto
- Jewish Family & Child Service of Toronto
- Native Child and Family Services of Toronto

Under the CYFSA, children’s aid societies are mandated to provide protection to children under the age of 16, and to 16- and 17-year-olds in certain circumstances. The specific functions of a children’s aid society include the following:

- Provide guidance, counselling, and other services to families to protect children or prevent child abuse and neglect.
- Investigate allegations or evidence that children under 16, or in the society’s care or under its supervision, may be in need of protection. Children who are 16 or 17 may also be found to be in need of protection, and additional circumstances or conditions applicable only to that age group may be prescribed to make that determination. However, they may not be brought to a place of safety without their consent.
- Provide care and supervision for children assigned or committed to the society’s care.
- Place children for adoption in appropriate circumstances.
Duties of Service Providers

The duties of service providers set out in the legislation emphasize the importance of procedural fairness when making decisions that affect families in such a fundamental way. In particular, children's aid societies must implement procedures for the disclosure of information to parents and, where appropriate, to children, and provide parents and children with the opportunity to challenge decisions that affect their rights and interests. Part X of the CYFSA, which relates to personal information, is modelled on provisions in the Personal Health Information Protection Act, 2004. This Part sets out extensive rules for the following: the collection, use and disclosure of personal information by the Minister and by service providers; the determination of whether an individual has the capacity to give, withhold or withdraw consent to the collection, use or disclosure of their personal information; the authorization of a substitute decision-maker to give, withhold or withdraw consent on behalf of an individual; the maintenance and protection of personal information by service providers; individuals' rights of access to service providers' records containing their personal information and to require service providers to correct that information; individuals' rights to make a complaint to the Information and Privacy Commissioner in respect of any contraventions of this Part; the Information and Privacy Commissioner's powers and duties under this Part.

Respecting and promoting procedural fairness is a critical aspect of social service practice. In order to do your job fully, you need the trust of your clients, and it is difficult to establish and maintain that trust if the client's rights have not always been respected. Failure to follow procedures may also result in administrative decisions being overturned by a court and even disciplinary action against the decision-maker.

Voluntary Services

Services may be provided to children and families on a voluntary basis or pursuant to a court determination that the child is in need of protection. The range of voluntary services available will vary from community to community. Some may be provided by a children's aid society and others by different kinds of agencies. Voluntary services can include parenting classes and programs designed to address developmental problems, disabilities, behavioural problems, addiction, domestic abuse, or divorce.

Temporary Care Agreements

A person who is temporarily unable to care for a young child or children may enter into a written agreement with a children's aid society for temporary care. The time limit for such an arrangement is one year for children under six and two years for children aged six or over.

Some children's aid societies may offer parent relief programs through which an exhausted or ill parent of a young child or children can rely on volunteers or staff to care for the children overnight, in either the parent's home or the caregiver's home. These arrangements are typically very temporary (up to a limited number of nights).

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4 Personal Health Information Protection Act, 2004, SO 2004, c 3, Schedule A.
A temporary care agreement may also be used where a parent needs to take time in an addiction rehabilitation program. Where a parent recognizes that he or she is unable to cope and that a court will likely order that the child be removed to a place of safety, the parent may agree to place the child in the care of a children's aid society and reserve the right to active participation.

How exactly a parent will participate in a child's care during a voluntary placement will vary among different children's aid societies and will depend on the reasons for the child's placement in care and parental factors. In almost all cases, the children's aid society will, at minimum, provide opportunities for parents and children to visit each other. Social service workers may be called upon to assist parents in remaining involved in their children's care and in improving their parenting skills with a view to having the children back home.

The CYFSA deals with society agreements with 16- and 17-year-olds. It states in section 77:

\[
(1) \text{ The society and a child who is 16 or 17 may make a written agreement for services and supports to be provided for the child where,}
\]

\[
(a) \text{ the society has jurisdiction where the child resides;}
\]
\[
(b) \text{ the society has determined that the child is or may be in need of protection;}
\]
\[
(c) \text{ the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and}
\]
\[
(d) \text{ the child wants to enter into the agreement.}
\]

The agreements can be for up to 12 months and extended as long as the total does not exceed 24 months up until the young person's 18th birthday. Either party to the agreement can terminate the agreement with written notice (s 77(2) and (4)).

**Duty to Report Suspected Child Abuse or Neglect**

A report of suspected child abuse or neglect is often the trigger for all further actions under the CYFSA. Reports may come from friends, neighbours, teachers, relatives, or even parents. Actions under the CYFSA may include bringing a child to a place of safety, but more often the children's aid society provides less intrusive programs to support parents, and parents accept assistance voluntarily. All societies encourage parents who are struggling with parenting problems to seek support from a local children's aid society.

**When to Report**

The CYFSA makes it mandatory for anyone to report a reasonable belief that a child—any child—has suffered or is at risk of suffering from abuse or neglect (s 125(1)). Essentially, a person has a duty to report a suspicion, based on reasonable grounds, that a child has suffered or is at risk of suffering one of the following:
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,
   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.

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,
   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.

3. The child has been sexually abused 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 abuse or sexual exploitation and fails to protect the child.

4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.

5. The child requires 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 the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, the treatment on the child’s behalf.

6. The child has suffered emotional harm, demonstrated by serious,
   i. anxiety,
   ii. depression,
   iii. withdrawal,
   iv. self-destructive or aggressive behaviour, or
   v. delayed development, 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.

7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child’s parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.

8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v 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.

9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child’s parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, treatment to prevent the harm.

10. 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 the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child’s parent has died or is unavailable to exercise 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.

12. The child is younger than 12 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 services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to treatment.

13. The child is younger than 12 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.

The duty to report is triggered as soon as the person making the relevant observations has reasonable grounds to suspect that harm has occurred, is occurring, or is threatened. This is a fairly easy threshold to meet, since it does not require certainty in the mind of the person reporting but only a reasonable suspicion. For example, a social service worker who observes bruises on a child’s body that are not consistent with normal play should make a report, even in the absence of any other evidence and, in some cases, despite an “innocent” explanation by the child.

The low threshold for reporting means that many reports will be baseless. Society employees are trained to assess reports and to conduct investigations in order to make such determinations. The low threshold encourages people to leave it up to the experts. When in doubt, report.

The above sections do not apply to 16- and 17-year-olds, but a person may make a report in respect of a child who is 16 or 17 if either a circumstance or condition described in paragraphs 1 to 11 above or a prescribed circumstance or condition exists.

How to Report
Once a person has reasonable grounds to suspect any form of abuse or neglect listed in the Act, the duty to report is triggered. The specifics of that duty, as expressed by the legislation, are the following:

- Report without delay.
- Report to a children’s aid society.
- Explain the reasons for your suspicion.
- Report directly—do not rely on your supervisor or subordinate.
- Report any new observations that occur after your initial report.

While all reports should be made promptly, the timing of the report will be influenced to some degree by the perceived seriousness of the harm observed or the presence of an ongoing threat. For example, if an adult is observed in the act of beating a child, it will usually be appropriate to call the police immediately, before calling a
children’s aid society. Note that even when the police are called, you are nevertheless obligated to report to a children’s aid society.

Where the circumstances are more ambiguous, it may be acceptable to wait and see whether an observation is simply an isolated incident of inadequate parenting (all parents have the occasional bad moment) or part of a pattern. However, it is never appropriate to ignore signs of abuse or neglect in the hope that they will be resolved on their own, or reported by someone else.

When calling to make a report, it’s useful to be prepared with notes about your observations and suspicions. It is important to be calm, objective, and open, and to refrain from using the reporting process as a personal attack on the suspected abuser. If your report sounds malicious or exaggerated, the credibility of your information will be tainted. Regardless of your feelings about the abuse or neglect you have witnessed, a coherent, impartial, and factual report is likely to be most helpful to the child.

The requirement that reports be made directly means exactly that. It is not possible to delegate your duty to report to someone else, even to your supervisor. You must make the call yourself. In many cases, it will be appropriate to advise another person of your suspicions, and in some cases, to consider that person’s advice with respect to reporting. However, the duty to report is always yours personally, and if you fail to make a report in circumstances where you should have, you may be charged with an offence.

**Special Duty**

While everyone has a duty to report, the consequences of failing to report are more severe for people who perform professional or official duties with respect to children. The Act provides that if a person

- works with children, such as a teacher, youth worker, recreation worker, or employee of service agencies;
- obtains information triggering a duty to report in the course of professional duties; and
- does not make a report,

that person can be charged with an offence and, if convicted, fined not more than $5,000.

The list of professionals who are liable to be fined does not specifically include social service workers, but many social service workers are employed in at least one of the listed job categories.

**Investigation**

When a report is made to a children’s aid society the society is obligated to investigate. Usually, the first step is to interview the person who made the report. The investigation may proceed from that point on a consensual basis, with the parents giving permission to interview and assess the child, and the suspected abuser consenting to an interview as well. Where the society suspects that a child may be in need of protection, it will typically refer the case to a review team.
**Review Team**

A review team must be made up of at least one legally qualified medical practitioner and others qualified to perform psychological, developmental, educational, or social assessments, as appropriate for the particular case. If the child’s parents consent, the child may be assessed by the review team without being brought to a place of safety by a children’s aid society. If a problem is uncovered, the parties involved may agree to the provision of services by the society or another suitable agency. Voluntary services may be provided with the child remaining in the home, or with the child moved to a foster home or other facility.

Of course, the children’s aid society will not always have the cooperation of parents. Where a society cannot adequately review a child’s case because the parents will not consent to an assessment, the child may need to be brought to a place of safety—that is, taken into the custody of the children’s aid society.

**Homemaker Option**

Where a children’s aid society has sufficient suspicion to begin the process of bringing the child to a place of safety, it can elect, instead of actually bringing the child to a place of safety, to have a homemaker remain with the child in his or her home. A homemaker may live with the child for up to 30 days. If the parent is still not able to care for the child after 30 days, the child is typically brought to a place of safety. Reliance on a homemaker is not appropriate in situations where a child is suffering abuse. Placement of a homemaker in the home tends to be used in circumstances where, for some extraordinary reason, a good parent is temporarily unable to care for a child and there are no relatives available to help out; for example, a parent may suddenly fall ill, be delayed while travelling out of the country, or be detained in criminal custody pending a bail hearing.

**Child Protection Proceedings**

As a social service worker, you need to know and understand the various stages in child protection proceedings, including court procedure, so that you can inform and reassure clients who are experiencing this process.

Example

You work in a women’s shelter and have a client whose child was brought to a place of safety as a result of a domestic assault in the child’s presence. The child’s mother is shocked that her child was taken, panicked about the situation, and anxious to have the child returned. You can assist by explaining why the child was removed from her care—that exposing a child to domestic violence constitutes child abuse, which the mother was unable to prevent—and that there will be a court hearing to determine whether the child needs protection. The client should understand that child protection hearings can be quite lengthy, extending over several days, and that it is unlikely that her child will be returned immediately following the first court appearance. It is also very important, in a case such as this, to advise the client to seek legal representation.
Grounds for Bringing a Child to a Place of Safety

As stated earlier, children’s aid societies have a mandate to provide protection to children under the age of 16 and, in some circumstances, to 16- and 17-year-olds. A child in need of protection is defined in the Act, and it lists criteria very similar to those listed in the section relating to the duty to report. This makes sense, because the intent of the section is to impose a duty on people to report information that suggests that a child is in need of protection. The circumstances in which a child may be in need of protection include the following:

- physical, sexual, and emotional abuse
- risk of physical, sexual, or emotional harm
- risk of sexual abuse or molestation
- denial of necessary medical or psychological treatment
- failure to address behaviour of a child that would result in criminal charges if the child were 12 years of age or older

Additional grounds for bringing a child to a place of safety include the following:

- A child already in the care of the children’s aid society has left or has been removed from care without authorization.
- A child under 12 has committed an act that, if the child were 12 or older, could form the basis for a criminal charge.
- A child who is under 16 has “withdrawn from the care and control” of parents, guardians, or agencies approved under the Act.

Situations where children have been brought to a place of safety and placed in the care of a children’s aid society include, but are not limited to, the following:

- A young teenager with a newborn child does not appear to have appropriate support services available to assist her in caring for the child. The children’s aid society considers the child to be in need of protection and has the baby removed from the mother’s care at birth.
- A children’s aid society has grounds to believe that a parent in a primary caregiving role is using illicit drugs.
- A domestic assault occurs within the family home with the child present at the time of the assault.
- A physician has found marks on a child, resulting in concerns by the children’s aid society that inappropriate disciplinary measures are being used in the home.
- The home has not been cleaned by the caregiver for a significant period of time, resulting in concerns for the hygiene and health of the child.
Bringing a Child to a Place of Safety With or Without a Warrant

Generally, a warrant is required before a child may be brought to a place of safety. Pursuant to the Act, a justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied, on the basis of a child protection worker’s sworn information, that there are reasonable and probable grounds to believe that the child is in need of protection and that a less restrictive course of action is not available or will not protect the child adequately.

However, if a child protection worker believes, on reasonable and probable grounds, that there is a substantial risk to the child’s health or safety during the time necessary to obtain a warrant from the court, the child may be brought to a place of safety immediately. Although this provision is consistent with the primary purpose of the CYFSA—to promote the best interests, protection, and well-being of children—the effect is to give a children’s aid society a significant degree of power to bring children to a place of safety and remove them from their home, without first having to establish before a justice of the peace or a court that, on a balance of probabilities, there is a need for bringing the child to a place of safety.

In some instances, the court has ordered the return of the child to the previous caregiver subject to restrictions imposed on the caregiver. In those circumstances, the least disruptive alternative was considered appropriate, in accordance with the other purposes of the Act.

A “place of safety” is defined under the Act as a hospital, a foster home, or another place designated as a place of safety (often, a group home established for the temporary care of children awaiting child protection proceedings).

A review team is assigned to every child brought to a place of safety. Within five days, one of three options must be chosen under the Act:

- Return the child to the parent(s) or guardian.
- Bring the case before the court for a child protection hearing.
- Have a temporary care agreement put in place.

The purpose of a child protection hearing is to make a legal determination as to whether the child is in need of protection and to provide for the child’s care. Until such a determination is made by a court, the child may not be placed in the care of a children’s aid society, and the society may not deliver services without parental consent.

It is often difficult to balance the best interests, protection, and well-being of a child with the autonomy and integrity of the family unit and the least disruptive course of action available to assist a child. The process is extremely disruptive to the family. In the effort to protect a child, and to err on the side of caution in ensuring that a child is protected, the integrity and autonomy of the family is often threatened, as well as the emotional security of the child, who may not be accustomed to being apart from his or her caregiver.
As a social service worker, you may wish to inform a client who is involved in child protection proceedings that, if appropriate, the child may be placed with a family member pending the resolution of the proceedings. Any family member willing to care for the child should present a plan of care to be assessed by the children's aid society.

Participants in the Child Protection Hearing

Parents of the child may be parties to the proceedings; that is, they may present evidence and make arguments. Additionally, any person who has cared for the child continuously for the six months before the hearing, such as a foster parent, may participate in the hearing.

A child aged 12 or over who is the subject of the hearing is generally entitled to attend unless the court thinks that being present would cause the child emotional harm. A child under 12 is generally not entitled to attend the hearing unless the court decides otherwise, on the basis that the child is capable of understanding the hearing and is unlikely to suffer emotional harm as a result.

A child may be represented by a lawyer; however, most children don’t have the means to retain a lawyer. In certain cases, the court will decide that the child should have legal representation and will make an order that he or she is to be represented by the Children's Lawyer. This is generally done where the court thinks that the child’s interests as expressed by the child do not coincide with either society’s view or the parent’s view of those interests. An example is a case in which an older child expresses a strong desire to remain in the care of an abusive parent.

A social service worker may be called as a witness in a child protection case, particularly if he or she was the one who made the original report. In most cases, giving evidence as a social service worker is a fairly simple matter of truthfully answering the questions asked—without exaggerating, fabricating, or concealing anything, and without making inappropriate or biased judgments about people or facts.

Dispositions

The purpose of a child protection hearing, as mentioned above, is to determine whether a child is in need of protection, and to provide for the child’s care. In some cases, the court will make a care order based on a plan of care that has been prepared by a children's aid society. A plan of care must include the following:

- a description of the services proposed to be provided to the child
- an estimate of the time needed to achieve the results hoped for
- a description of the criteria the society will use to determine that those results have been achieved

Social service workers employed by children's aid societies may be involved in the preparation of plans of care and may be required to testify in court about them. In making an order, a court need not endorse or follow a plan of care exactly as proposed, but the plan of care is often a useful starting point in preparing a court order.
**Best Interests of the Child**

The decision to make a child protection order must be based on the best interests of the child. There are several factors to be considered in determining the child’s best interest, including:

- the child’s physical, mental, and emotional needs
- the child’s physical, mental, and emotional level of development
- the child’s cultural background
- the child’s religious faith (if any)
- the child’s existing family relationships and the importance, for the child’s development, of a positive relationship with a parent and a secure place as a member of a family
- the child’s views and wishes

Though the court must consider a child’s ethnic and cultural background in all cases, the court has a special responsibility with respect to First Nations, Inuit, Métis, and other Indigenous children. Any person who makes an order with respect to an Indigenous child in need of protection must “take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child’s cultural identity.”

If a court is convinced that a child is in need of protection, before it may make an order removing the child from the home, the court must be satisfied that less disruptive alternatives would be inadequate to protect the child. This is consistent with the overall purposes of the CYFSA: to promote the best interests, protection, and well-being of children, and to consider the least disruptive course of action that is available and appropriate in a particular case.

Where the children’s aid society proposes to keep a child in care, it must explain why adequate protection cannot be assured if the child is returned to his or her home, and what efforts, if any, will be made to maintain the relationship between the child and the parents or guardian. If the society proposes to remove the child permanently, it must inform the court of its plans for a long-term stable placement for the child.

**Care and Protection Orders**

In some cases, where a child has been brought before the court with the participation of the parents, or with his or her own consent, the court can make a **consent order**. This is an agreed plan for the child’s care, developed with input from the parents and/or the child, and consented to by them.

Most child protection orders are not agreements but rather are imposed by the court. The court has three options when making an order for care on behalf of a child without the parents’ consent:

- a supervision order
- an order of interim society care
- an order of extended society care
SUPERVISION ORDER

A supervision order allows the child to remain in the care of the parents or guardian under the supervision of a children’s aid society for a period of 3 to 12 months.

INTERIM SOCIETY CARE

If the court determines that a child cannot be adequately protected at home, but that it is appropriate for the child to continue to have contact with the parents or guardian, the court will typically make an order of interim society care. An order of interim society care provides for a child’s placement in residential custody for a maximum of 12 months.

A child who is in society care has the right to visit his or her parents. If the parents (and sometimes others, such as grandparents) wish to visit the child, they must apply to the court for an access order. The court will permit access only if it is determined to be in the best interests of the child. If the child is 16 or older, he or she must consent to the access.

The court can also make a consecutive order of interim society care followed by supervision (after the child has been returned to the care of the parents or guardian) for a total period not exceeding 12 months.

In some cases, where a child has been placed in interim society care, the court may subsequently determine that it would not be appropriate to return the child to the care of the parents or guardian. In these circumstances, the court can make an order of extended society care in respect of the child.

EXTENDED SOCIETY CARE

If the court determines that it is unlikely that the parents or guardian will ever be able to care for the child adequately, the court will make an order of extended society care. When a child enters into extended society care, it is not expected that the child will ever be returned to the care of the parents or guardian. A child who has entered into extended society care may subsequently become available for adoption without the consent of the parents or guardian.

In general, access orders are not made for youth who have entered extended society care. If circumstances were so extreme as to result in extended society care, access is unlikely to be in the child’s best interests. Access could also jeopardize the child’s chances to be placed in a stable home environment.

An extended society care order ends on the day the child turns 18. An interim society care order or supervision order that has not already expired is also terminated when the child reaches 18.

As was the case in the previous legislation, the new Act can provide continued care and support to persons who are 18 or older and eligible for prescribed support services.

RESTRaining ORDER

In some cases, instead of or in addition to a supervision or society care order, a court may make a restraining order. A restraining order protects the child from another person by restricting the access of that person to the child. A restraining order can...
be an appropriate solution where the child has been abused by a person other than the custodial parent, such as a member of the extended family, a family friend, or a neighbour.

REVIEW OF ORDERS

Time-limited disposition orders made by the court (supervision orders, society care orders, and consecutive orders) must be reviewed prior to their expiration. The society is required under the CYFSA to commence a status review application and to serve it on all parties entitled to notice of the proceeding. On status review, the court may terminate the order that was made previously or make a further order of the same kind or another kind.

Status reviews of extended society care orders must be carried out at least once per year. There is one restriction on the making of a further order by the court: An interim care order cannot be made on a status review of an extended care order.

Kinship Care

An alternative to society care orders, which should be considered if appropriate, is the placement of a child in the care of a relative, friend, or neighbour, or, in the case of First Nations, Inuit, Métis, or other Indigenous children, a member of the child’s band. This type of placement is made with the consent of the person who will be taking charge of the child.

Kinship care refers to placement of an at-risk child (or children) in the care of grandparents, aunts, uncles, other close relatives, or even non-relatives, such as godparents, with whom the child has a kinship bond. An arrangement to place a child in kinship care can happen at two different stages in a child welfare case. It can happen with the consent of parents—for example, as part of a voluntary intervention by a children’s aid society—or after a formal order has been issued to place the child into society care.

Differential Responses

Child welfare organizations in many US and Canadian jurisdictions are beginning to embrace the benefits of adopting a program of differential responses to child welfare cases, depending on the particular circumstances. The Centre of Excellence for Child Welfare (CECW), an agency funded by Health Canada, describes differential response as follows:

Differential response models, sometimes referred to as “alternative response models” or “multi-track systems,” … include a range of potential response options customized to meet the diverse needs of families reported to child welfare. Differential response systems typically use multiple “tracks” or “streams” of service delivery. While some jurisdictions may initiate up to five tracks, as is the case with Michigan, most differential response systems employ two streams with the investigative track handling high-risk

cases. High-risk cases include all reports of sexual abuse, serious physical or emotional harm, chronic neglect and cases in which criminal charges may be laid. Less urgent cases are shifted to an alternative “assessment” or “community” track, where the focus of intervention is on brokering and coordinating services to address the short and long-term needs of these children and families.

In Canada, the only province or territory to have formally implemented a differential response model is Alberta. In Ontario, however, research studies and draft papers have been completed on the subject, including a paper by the Ontario Association of Children’s Aid Societies (OACAS). While the OACAS suggests that the CFSA implicitly permits the development of a differential response model, changes to the regulations would likely be required to fully support this initiative.

Responsibilities Toward Children in Care or in Receipt of Services

Once a child has been found to be in need of protection, a duty arises, on the part of the children’s aid society and its employees, to actively protect the child. Failure to provide protection and service to a child as required by the CYFSA could lead to loss of the designation as a child protection agency or loss of a licence to run a children’s residence.

There is also the potential for a civil lawsuit arising out of failure to protect a child. The Act specifically permits the Children’s Lawyer to bring a civil suit for damages on behalf of a child against his or her abuser. The definition of abuse for this purpose is set out in section 136(2) of the Act:

No person having charge of a child shall, …
   (b) by failing to care and provide for or supervise and protect the child adequately,
      (i) permit the child to suffer abuse, or
      (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child’s development.

Under the Act, a civil suit could be brought against an individual social service worker or against a children’s aid society or other child protection agency or residence. In some circumstances, a social service worker may even face criminal prosecution for failure to prevent the injury or death of a child.

Child welfare experts have suggested that social workers and social service workers who perform their duties in good faith and to the best of their abilities within the standards of their profession can generally expect to be free from criminal or civil liability. However, it is clear that law enforcement personnel will respond to the human cost of mistakes, and to the public outrage that follows serious harm to a child under agency supervision.

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Notes, Reports, and Records

Accurate and timely note-taking is a crucial skill for social service workers. It is important for workplace efficiency, and it is critical to protect against liability.

Clients have access to all mental health and medical records regarding their care unless the treatment professional has reason to believe that access to the information contained in the clinical record may be harmful to the client or a third party.\(^7\)

Documenting work in progress is a necessary component of keeping organized and prioritizing when dealing with heavy client caseloads. Information that is undocumented may be quickly forgotten or inaccurately recalled. By taking a few extra minutes to jot down notes summarizing all phone calls and meetings with clients, as well as internal discussions about clients, you will be able to pick up a file several weeks later and, at a glance, update your knowledge of the case. If co-workers are involved with the same client, “notes to file” are a valuable communication tool, keeping everyone informed. “To do” lists and action points are also helpful to keep you focused on what needs to be done.

In the event that you are asked to justify your decisions or actions with respect to a client, reliable and detailed notes will back you up. Your notes are evidence that you considered the issue carefully and fully, and responded in a competent and responsible manner. Without this document trail, you put yourself at risk of allegations of negligence.

Besides generating notes for personal or internal agency use, social service workers may also need to produce reports designed to be read by others, such as social workers, judges and lawyers, or government administrators. While internal notes are primarily designed as memory aids for the social service worker or to provide information to colleagues, reports have different and often quite specific purposes. A social service worker’s duty both to respect client privacy rights and to communicate honestly with agencies entitled to receive reports means that considerable judgment is required in preparing external reports.

Standards of Practice for Record-Keeping

The Ontario College of Social Workers and Social Service Workers sets out the following requirements for record-keeping.\(^8\)

The creation and maintenance of records by social workers and the social service workers is an essential component of professional practice. The process of preparation and organization of material for the record provides a means to understanding the client and planning the social work and social service work intervention. The purpose of the social work and social service work record is to document services in a recognizable form in order to ensure the continuity and quality of service, to establish accountability for and evidence of the services rendered, to enable the evaluation of service quality,

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\(^7\) McInerney v MacDonald, [1992] 2 SCR 138.

and to provide information to be used for research and education. College members ensure that records are current, accurate, contain relevant information about clients and are managed in a manner that protects client privacy and in accordance with any applicable privacy and other legislation.

Note-Taking

General Considerations

In taking notes, you are creating a written record of certain events. Before you begin, you should ask yourself the following questions:

- Who will read these notes?
- What will the reader be hoping to learn from them?
- Is the reader familiar with the context, or must I provide background information?
- What are the privacy implications of making these notes?
- What is my own purpose for making these notes?

In the simplest scenario, you will be keeping notes for your own future use. In that case, you should make notes in the format that you find most useful, without worrying about providing background information. However, it is important to keep in mind that in some circumstances, notes recorded for personal use may need to be made available to others, such as colleagues or perhaps the client. Your notes may even be used in a legal proceeding; for example, you may be required, in your professional capacity, to give testimony based on your notes in a court of law. For this reason, any notes relating to the practice of your profession should be accurate, and free from offensive or inappropriate content that would reflect badly on you or on the agency where you work.

If you are keeping notes that are intended to be read by others—for example, in a setting where clients are served by multiple professionals—there will be additional considerations. For example, you will need to consider whether what you write is understandable to the intended reader and whether the notes provide sufficient information.

In the course of your practice, you may encounter situations in which legal issues arise. These can include harassment by another resident in a group home, disciplinary action against staff members, use of restraints to manage a client, and the witnessing of abuse involving a client.

In these situations, it is prudent to take notes so that you can substantiate your actions and your reasons for taking them, in case the incident forms part of a subsequent investigation or legal claim. This type of note-taking is especially challenging, and the keys to getting it right are to be thorough, honest, accurate, and neutral. Sometimes notes taken in these contexts need to be used at a later time to generate a report.
Usefulness and Understandability

Your notes will be useful only to the extent that they can be understood by the reader and that they provide all the information that is required. In reviewing your notes for understandability, you may find the following checklist helpful.

1. Did you make the notes as soon as possible after receiving the information? Timeliness in making notes promotes accuracy.
2. Do your notes follow a well-organized structure—for example, chronological order?
3. Are your notes dated? If you make notes in a shared notebook or file, are they marked as yours?
4. Did you write out, in full, any pertinent details and check the accuracy of the information recorded (including the spelling of names, addresses, and phone numbers)?
5. If you used abbreviations, did you work from a list of accepted or recognized abbreviations, or provide explanations of what they refer to?
6. Did you make it clear which portions of your notes are direct quotations of another person’s words by using quotation marks?

Generally, it is not appropriate to attempt to answer the question “Why?” Often, you will be reporting on the actions of others, and you cannot be sure that you understand the motivations for someone’s actions, or the underlying causes of an event. Attempting to do so can make you appear less than impartial, if the matter is ever reviewed, or can inappropriately narrow the scope of an investigation.

Making useful, understandable notes requires careful consideration of what information should and should not be reported, and how it should be reported. Some guidelines are suggested in the following section.

Choices About Information

Notes should be focused and concise. Including unnecessary or excessively detailed information will only reduce the readability and impact of important content. For the purpose of building a rapport with your clients, you may sometimes listen to their ideas about quite irrelevant matters, but those conversations need not be recorded. Personal comments should also be avoided; if you must note something negative about a client, you should do so in language that is professional and as neutral as possible.

To illustrate the choice of appropriate information, consider a situation where you are making notes of a client interview to determine employability. Information obviously worth recording would be details about education and work experience, and about the kind of work sought. It would also be useful to note factors that could restrict the client’s availability for certain kinds of employment; for example, “She has school-age children and might have difficulty working afternoon and night shifts”
or “He was fired from a job that involved sales, which he says he hates.” Anecdotes about friendships in previous workplaces are probably not important. You should avoid value judgments, such as “He claimed to have excellent customer service skills, but I think he was just being arrogant.” Instead, keep it factual.

Finally, it can sometimes be useful to note gaps in information or to note that you have not observed something that you expected to observe. This can serve as a reminder, to yourself or to colleagues, of matters that should perhaps be investigated further. In the context of the employability interview described above, you might discover that there is a gap of a few years in the client’s employment history and that the client is reluctant to provide information about what he or she was doing during that time. Since the reason could affect your client’s eligibility for a particular job (for example, if your client was serving time in prison), further attempts should be made to obtain an explanation from the client.

**Revising Notes**

Sometimes it is necessary to make changes in your notes—for example, if you discover an error or if you want to include additional information. When and how you make such revisions will depend on the kind of work you do and the format you use for recording information. However, in all circumstances, you should follow certain procedures in altering your notes.

The first rule is that, unlike personal notes, notes made for professional purposes should never be destroyed.

The second rule is that, since your notes may be used by others, you should make your changes clear. For example, in handwritten notes or a typewritten copy, use a single line to strike out, and write the correction above or after this line. It is good practice to date and initial any changes of substance (as opposed to trivial changes such as corrections in spelling), particularly if your notes are part of a file to which several people contribute.

Some professionals use notebooks with numbered pages, both for easy reference and for security of the record, since it is immediately evident if an entry has been torn out. If you use this type of note-taking system, never tear out a page; it may appear that you are trying to hide something. Instead, strike through the page with a diagonal line. You should not be reluctant to correct inaccuracies, but you should do so by crossing out in a way that doesn’t obliterate the entry, or by adding new, more accurate information on another page.

If you make notes in an electronic format (on a computer), the safest way to make a change is to save the previous entry as a draft, and work from a new version of the document, saving any previous versions for your records. Alternatively, you can use a word processing program that “tracks” changes. These programs often note changes using strikethroughs or different colours and can save the date and time of the change. Many of these programs are designed to manage documents that are accessed by more than one user, tracking the deletions and additions of each.
Privacy Considerations

The introduction of the federal *Personal Information Protection and Electronic Documents Act* and the Ontario *Personal Health Information Protection Act, 2004* added a new layer to the issue of protecting clients’ privacy. It is difficult to give specific recommendations about privacy protection here, because social service workers work in a wide range of settings. However, some general guidelines can be suggested.

- Be aware of concerns about privacy and the confidentiality of client information.
- Be familiar with your employer's policy with respect to client privacy.
- If you need to request, share, or use personal information about a client, ensure that the appropriate releases have been obtained.
- Never share your notes unless you have been given permission to disclose them from every person mentioned in them. (Your office may have obtained releases to permit certain kinds of disclosure; inquire whether this is the case.)
- If you are authorized to disclose your notes, make sure you understand the scope of that authorization: to which client(s) and to what information it applies, and to whom the information can be disclosed.
- If in doubt about your right to disclose certain information, withhold the information until you have checked with a supervisor or obtained a new release from the client.

Typically, in a setting where you are expected to take notes to facilitate the provision of client services, there is a certain expectation of privacy associated with the content of those notes. In many cases, people who have interests that are opposed to your client's interests (for example, the other party in a lawsuit) will not be able to gain access to your notes. There are, however, exceptions. Unlike the communications between a lawyer and a client, what is said between you as a social service worker and your client is not considered privileged (protected from disclosure in court). Also, some statutes or court orders can force you to disclose the content of communications with a client. You might also, under certain circumstances, feel a moral obligation to disclose information to a third party, such as if you believe your client is suicidal.

As a result, you should never promise a client confidentiality unless you are certain that you can guarantee it. You should also not allow the client to be lulled into a false sense of security about talking with you. In some cases, it is necessary to warn a client ahead of time that there are certain kinds of information that you cannot keep to yourself. This gives a client the opportunity to decide whether to censor what he or she chooses to tell you.

If you know that a party who is opposed to your client could gain access to your notes, you should use extra care when deciding what information to include in them.

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9 *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5; *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Schedule A.
This means that you can use discretion in recording unfavourable or unflattering details, but it doesn’t allow you to omit information that you ought to record.

It is possible that in a criminal matter involving sexual assault, the lawyer for the accused will request that the victim disclose certain information about past history that will assist in the accused’s defence. This is a right for the accused to make a full and fair defence under section 7 of the *Charter of Rights and Freedoms*. Victims have protections against disclosure of information related to past history. It is possible that social service workers will be asked to appear at court along with any relevant notes relating to their client’s past history. In such cases the worker has the right to object to the disclosure of confidential client records. The court will balance the legal rights of the defendant and the rights of the victim. The judge will conduct an “in camera” hearing to determine whether the production of records is necessary based on the interests of justice.

The court will look at society’s interest in encouraging the reporting of sexual offences, in encouraging treatment for complainants of sexual offences, and in the integrity of the trial process. The judge determines which records are relevant and how the record will be produced, viewed, and edited.11

**Report-Writing**

Report-writing differs from note-taking in two key ways:

- Reports are prepared specifically for use by persons other than the writer.
- Reports are usually written for a specific purpose other than just the creation of a written record.

Reports may also differ in other ways, including the following:

- A report may be prepared in collaboration with other colleagues, professionals, etc.
- The organization or content of a report may be formally prescribed, instead of being left to the preference of the writer.
- The writer may be required to express opinions and/or make recommendations.

While the range of reports that social service workers may encounter in their work is almost limitless, the general function of those reports is universal: They provide a formal framework by which a person who has direct knowledge of or experience with a client, event, or set of circumstances can communicate that knowledge or experience to a third party (a supervisor, an administrator of an agency, a committee, etc.).

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The following examples indicate the kinds of reports that social service workers may be required to contribute to or write:

- **Human resources reports:** A social service worker who supervises other employees may be required to report to a senior manager on the performance of those subordinates.

- **Reports in family relations contexts:** A social service worker who works in a supervised access program may be asked to prepare a report for a court on how well this approach is working for a particular family and whether there are any problems.

- **Reports for use by care workers or health care professionals:** A social service worker may be asked to observe a candidate for long-term care and report on the extent of the candidate's need for assistance with daily living.

- **Reports in the corrections context:** A social service worker who counsels offenders serving custodial sentences may be asked to prepare a report about some aspect of an inmate's progress or behaviour for use in an early release assessment.

- **Reports in the context of making social benefits decisions:** A social service worker who is an intake officer for a social benefits program, such as Ontario Works, may be required to prepare regular reports for program administrators on whether individual clients are complying with participation requirements.

When preparing a report, you will benefit from having thorough and clear notes from which to work. If there is a prescribed format, you should be careful to follow it. This may mean converting content that is organized in one way in your notes into a different format for the report. You may also have to supplement the information in your notes with additional background information, if the intended readers of the report do not have your knowledge of the context—the client, the issue or event, and the circumstances. In effect, you must put yourself in the reader's shoes and ask yourself what the reader needs to know.

Often, you will be required to strike an appropriate balance between your duty to the client, or to your employer, and your obligations as the author of the report. For example, if you are an intake officer with Ontario Works, and you are preparing a report for benefits about an applicant whom you feel is not prepared to comply with participation requirements, you may have a duty to express that opinion even though it would disappoint the applicant. Your duty to your employer and the goals of the program supersede your obligations to the applicant.

Similarly, if you are working as a parole officer, or in a program for inmates of a correctional facility, you may be required to report on a client’s suitability for early release. If you have concerns about the client, you must report them, even if doing so
appears to be against the client’s interest. In such situations, where you are required to draw unfavourable conclusions about a client, explain your reasons truthfully and briefly; avoid unnecessary elaboration. Ideally, well in advance of making your report, you will have laid the groundwork with the client, advising him

1. that you are required to make reports about him in the course of your work;
2. that your reports must be truthful and accurate; and
3. that there are important limits on the confidentiality of communications between you and him.

The general guidelines for writing reports are similar to those for note-taking and can be summarized as follows:

1. In making reports, you should always be scrupulously honest.
2. You should be neutral in your comments unless an opinion is specifically required.
3. You should use appropriate and professional language:
   a. Avoid labels or comments that could be construed as racist, sexist, elitist, or otherwise discriminatory.
   b. No matter how strong your private opinions, refrain from making judgmental or damaging remarks about anyone, even a person whose behaviour toward your client is extremely offensive and upsetting.
   c. Avoid comments that could reflect poorly on you as a professional or on your employer.
   d. Avoid any comments that might suggest bias or a desire to cast blame on another party.

Finally, you should remember that your reports, or your notes, may be viewed by the client at some later time. Therefore, you should take care always to communicate with the sensitivity that is expected of you as a helping professional.

**Documentary Evidence in Legal Proceedings**

Evidence, in the context of civil litigation or criminal proceedings, is anything that tends to support or disprove a conclusion. In many legal proceedings, a significant portion of the evidence presented takes the form of written documents, collectively referred to as “documentary evidence.”

Generally, a document filed with the court is not by itself considered sufficient proof of its contents. In most cases, the court requires a witness to attend in court to give oral testimony about the document—who made it, when it was made, and whether its contents reflect the truth. For example, in a case involving child abuse, a court presented with allegations of child abuse written in a private letter from one person to another will not automatically accept the letter as evidence. In order to establish the reliability of the evidence, the party seeking to have it admitted by the court must call the writer of the letter to testify about the letter and its contents.
It is important for social service workers to understand the role of documentary evidence in legal proceedings and court or tribunal procedures for testing the reliability of such evidence. From time to time, cases arise where notes and other written records created by social service workers are brought forward as evidence for or against a party in the case. In these circumstances, the social service worker who prepared the document may be called to testify in court or at the hearing.

A social service worker may also be called to give oral testimony in a case involving a client or the social service worker’s employer, and she may rely on her notes and reports to refresh her memory. This section provides some suggestions that you may find useful if your professional work places you in either of these situations.

**Using Your Notes in Court**

If you are required to give testimony in court, you will be permitted to bring your notes with you and to consult them as a memory aid. To avoid fumbling with your notes on the witness stand, carefully review them on the day before your court appearance so that you can quickly locate the information you need.

When you testify, you must ask the judge's permission before you refer to your notes, and you will not be permitted to simply read from your notes. The lawyers who question you will want you to describe your current recollection of the events in question; your notes are intended to remind you of important details you may have forgotten.

If you choose to rely on your notes in court, the judge will likely allow the other party’s lawyer to examine them and perhaps make photocopies. If your notes relate to more than one client, you have a duty to protect the information about the clients who are not the subject of the court case. You can do this by providing the other party’s lawyer with only those pages that apply to the relevant client. If you use a notebook from which it is not possible or acceptable to remove pages, you can use elastic bands to separate the notes that you are required to disclose from the notes that you need to keep confidential.

If you are asked a question and your truthful answer differs from what you have written in your notes, you must give that truthful answer and be prepared to explain to the court why your notes, in your opinion, are not accurate.

**Being Cross-Examined on Your Notes**

If your notes have been provided to the opposing party’s counsel as part of the disclosure process, they may have been entered as an exhibit in the case and may form part of the public record. If this has happened, it is likely that you will be subject to cross-examination on the content of your notes by the other party’s lawyer. Make sure you have a copy of the notes in front of you before this cross-examination begins. If you don’t have them, tell the judge so that you can be provided with a copy.

Your credibility as a witness—the degree to which the judge and jury believe you—can directly affect the weight that will be given to your evidence. For this reason, you will be most helpful to your client if you deliver your testimony in a straightforward way, without excessive elaboration or attempts to hold back information.
If you are asked about a passage in your notes that you cannot immediately recall, do not rush your answer, even if the cross-examining lawyer is pressuring you. Take a moment to think, and, if necessary, ask permission to consult your notes; then, once you’re sure, answer the question. It is in the interests of justice for you to answer accurately, not instantly, and you need to avoid making a mistake that the opposing lawyer can use to cast doubt on your credibility.

Since the objective of cross-examination is to undermine the other party’s case, the cross-examining lawyer may attempt to find inconsistencies in your testimony, or between your testimony and your notes, so that it appears that you are lying or fabricating information. Rather than react defensively, stay calm, and remember that your duty is to be truthful. If you have made a mistake in an earlier statement, if you have made a mistake in your notes, or if you simply don’t remember something, you must say so. But also keep in mind that it is never appropriate for counsel to badger or harass a witness, nor are you obliged to answer the same question twice. If this happens, pause to allow the lawyer for your side to object, or state that you are feeling bullied, or that you have already answered the particular question. Your statement will form part of the court record.

**Affidavits**

Child protection law has been increasingly using affidavit evidence. An affidavit is a sworn written statement by a witness that replaces testimony. It is generally limited to direct knowledge. Hearsay or information conveyed by others is sometimes allowed. Affidavits are drafted by lawyers and should reflect the witness's tone.
CHAPTER 6  Child Protection Law, Notes, Reports, and Records

KEY TERMS
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REVIEW QUESTIONS
1. What is the paramount purpose of the CYFSA?
2. List four kinds of observations that would trigger a duty to report under the CYFSA.
3. List three possible dispositions that can be made once a child is determined to be in need of protection. How do they differ?
4. Are communications between a client and a social service worker protected by privilege?
5. If a social service worker has recorded confidential personal information about a client in her notes, and a third party requests access to those notes, what should the social service worker do?

SUGGESTED SOURCES
Canadian Child Welfare Research Portal (CWRP), <http://cwrp.ca/about>
Office of the Provincial Advocate for Children and Youth, <https://www.provincialadvocate.on.ca>
Ontario Association of Children’s Aid Societies, <http://www.oacas.org>
Samuels, Marilyn & Elayne Tanner, Managing a Legal and Ethical Social Work Practice (Toronto: Irwin Law, 2003).