

Duty to report

Case study, questions & analysis

by Julia Hengstler, Gail Krivel-Zacks and Elizabeth Kroeker

Society looks to school principals and vice-principals, faculty, and staff as gatekeepers of children's well-being. School personnel are often aware of, and trained in, the protocols around duty-to-report in cases of physical neglect, sexual abuse, or potential self-harm.

However, duty-to-report is not well understood in terms of student safety in digital contexts.

School personnel must have clear and shared understandings about how to identify and deal with issues around e-safety that are disclosed or shared with them.

We believe that the duty-to-report students at-risk encompasses situations where information is taken from or regards digital contexts. The duty to report hinges on the ability of school faculty and staff to identify and assess a student's risk of physical harm, sexual abuse, or sexual exploitation from behaviour or content evidenced in those digital environments.

In this article, a case study is presented to demonstrate how duty-to-report extends to a student's e-safety with implications for protocols and training. Our case study and comments are personal opinions. Schools should vet protocols, procedures and policies through appropriate district channels.

Case Study

Chris is a tech savvy English teacher. She is a long-time technology leader in the district. With administrative and parental permission, she incorporates social media into her courses. A social acquaintance, Sylvia, asks Chris' advice. Sylvia's 16-year-old son, Jason, posted a picture of his 15-year-old ex-girlfriend, Nancy, in skimpy lingerie on his Facebook account. Nancy first posted the image on her own Facebook account. Jason has 300 Facebook friends but in the 24 hours after posting Nancy's image he got 60 new friend requests from other boys including 2 adult men from the US. Jason was concerned and told his mother. With some investigating, Chris finds out one of Jason's new "friends" is a registered US sex offender. Chris is worried about Nancy and Jason's situation. Neither teen is Chris's student, and they do not attend Chris's school. Chris is not sure what to do next. Chris's school does not have a published protocol for these types of events and Chris has only ever received training for duty-to-report instances as they relate to parental abuse/neglect and potential suicide in her school.

Questions to facilitate discussion

Is there a legal obligation for Chris to report this incident?

- A) Yes
- B) No

If Chris reports the incident who will she be reporting on?

- A) Nancy
- B) Jason
- C) Both

What are the main components that are used to assess risk?

- A) Identify a potential risk
- B) Weigh the nature and severity of risk
- C) Both A and B

If Chris decides she does need to report, who will she report to?

- A) Ministry of Children and Family
- B) The Police
- C) The principal in her school
- D) All of the above

What is the training responsibility of the school district?

- A) There is no established precedent for school districts to provide training
- B) There is established precedent for school districts to provide training
- C) Providing training for some staff can be implied by the criminal code
- D) A and C

Assessing risk and whether it triggers duty-to-report has three components – identify a potential risk; weigh the risk; and, filter it through the BC legal lens of duty-to-report as defined by the *Child, Family, and Community Service Act of BC*.

When school personnel become aware – or are made aware of – a potential e-safety incident from, or in, digital environments, their critical tasks are identifying a potential risk and assessing the risk for immediate or likely harm. If there is a question about whether the student is at risk, it is best to err on the side of protecting the child.

However, if school personnel are not positioned to identify – let alone assess – credible risks to student welfare, the protective process of duty-to-report collapses. To determine whether the risk requires formal reporting requires an understanding of the legal lens through which duty-to-report is required and a clear process for reporting at the school.

In the case study, due to the spe-

Chris does not know whether or how duty-to-report could apply in this context: the behaviour is not school-based, the students are not hers, they do not go to her school, she has heard about the situation third hand, she hasn't been contacted by the potential 'victim.'

cific area of Chris's interest in technology use among youth, she has remained current with safety issues in digital environments – especially social media. This is serendipitous: not all teachers have such an interest. In this case, Chris is able to anticipate a credible potential threat to Nancy's safety based on a pattern identified in research regarding youth and technology.

Chris's personal professional knowledge is what led her to search sex offender registry information on the two US adult males who "friended" Jason after Nancy's image was posted. Chris is also concerned about the number of "friends" Jason gained overnight – likely due to Nancy's picture. Chris believes that Nancy is now at-risk of exploitation or harm – but she's not sure how to proceed. Chris has neither training or a defined protocol to follow. Though she's been trained in duty-to-report protocols for parental abuse/neglect, or potential suicide, Chris does not know whether

or how duty-to-report could apply in this context: the behaviour is not school-based, the students are not hers, they do not go to her school, she has heard about the situation third hand, and she has not been approached by Nancy herself. Without a protocol or understanding, Chris believes that duty-to-report might apply. She is concerned for Nancy. Chris decides to approach her school counselor, Lisa.

Lisa and Chris have been colleagues for a few years. Chris knows Lisa has a social work background and will have a clearer idea of whether duty-to-report report applies. Lisa is comfortable using technology for basic school purposes but is by no means a techie. Chris tells Lisa what has happened with Jason posting Nancy's picture. At first Lisa is unclear whether duty-to-report report applies in this online situation – but the "friending" of those adult males is concerning – especially one identified as a sex offender.

Lisa suggests a step-by-step ap-

proach. "How would I approach it if it were a question of neglect or potential suicide?" she asks. Initially, Lisa is unfamiliar with how Chris has identified and assessed the threat to Nancy's safety. Lisa begins to walk Chris through the duty-to-report standards applied in BC and Chris walks Lisa through how she identified and assessed the risk.

The BC legislation that delineates students "in need of protection" is the *Child, Family, and Community Service Act of BC*. Section 13 addresses risk identification and assessment. While Section 13 encompasses a variety of parental situations such as emotional harm, deprivation of necessary health care, etc. that may surface in school situations, the focus in this situation is how risk identification and assessment extend to e-safety risks and digital environments. Section 13(1)c states that a child will be deemed "in need of protection" if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child.

Both Lisa and Chris believe that Nancy is at-risk of likely sexual exploitation or other harm. They have identified a *need* for protection which means they now have a duty-to-report as understood under the *Act*. Lisa walks Chris through Sec-

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tion 14 of the *Child, Family, and Community Service Act of BC* dealing with duty-to-report, which says: “A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.”

The need for protection must be reported even if the information may be considered “confidential and its disclosure is prohibited under another *Act*” or the information is considered privileged (though solicitor-client relationships are excluded). While “No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information,” if a person shirks this duty-to-report, s/he may be “liable to a fine of up to \$10,000 or to imprisonment for up to 6 months, or both.”

In the case of BC’s K-12 schools, the “person designated by a director” to whom school faculty and staff report is often the school principal — though districts may vary in the specific personnel charged with this responsibility.

Lisa and Chris discuss the lack of school protocol for the situation, but decide that the best course of action is to follow established school protocols for reporting likely harms such as abuse or potential suicide. In their school, that means reporting the issue to the principal. Chris and Lisa report the situation to Max, their principal. During their meeting, Chris and Lisa mention shared

professional concerns raised in this situation: to discharge a duty-to-report, faculty and staff must be able to reasonably assess the risk of physical harm, sexual abuse, or sexual exploitation inherent in a specific digital scenario and be supported by clear reporting protocols directing them to a specific person in a given school charged with receiving the reports. Chris and Lisa believe this implies the provision of training in digital risk indicators and explicit protocols for school personnel. Max proceeds to carry through with the reporting procedure, and schedules a follow-up meeting with Lisa and Chris to take further steps to protect student safety.

Implications for Training & Practice

In the same way that schools provide training around the duty-to-report parental abuse/neglect or potential suicide cases, schools need to provide training regarding risks in or from digital environments and how they could trigger a duty-to-report. If a district fails to provide training to administrators, teachers, and staff in the identification and referral protocols for digital situations where duty-of-care could be reasonably and foreseeably be said to apply to students, the district may be opening itself up to allegations of negligence under *Canadian Criminal Code Section 22.1 Offences of negligence – organizations*.

In general, for an organization to be found guilty of committing a

crime of negligence, the Crown will have to show that employees of the organization committed the act and that a senior officer should have taken reasonable steps to prevent them from doing so.

To our knowledge this argument has not yet been used in relation to duty-of-care situations arising for students in digital environments. Yet, in the absence of training, it is likely that district employees will not be able to reasonably identify a foreseeable risk to a student that puts the student at immediate or likely risk of harm under *Section 14 of the Child, Family, and Community Service Act of BC*. The lack of training and inability to identify a foreseeable risk exposes the student to harm and the employee to fines and imprisonment. In such a case it could be argued that the district was negligent in failing to provide training in identification and protocols for addressing duty-of-care as it relates to risks manifesting in digital environments.

Not all personnel may feel they have the expertise to classify a situation in a digital environment as a “need” for protection, but a school can support risk identification by specifying individuals that may be consulted to support the risk assessment. In a best practice, identified in the United Kingdom by Hengstler (2012, 2013), Kent County Council schools have an e-Safety Strategy Group composed of “school staff, Kent County Council Officers, child safeguarding officers, Connexions, Libraries and Archives, Kent

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Police and other children's workforce professionals." A key role in this group is the e-Safety Officer for the Kent area schools. The e-Safety Officer provides "advice, guidance and training to all educational settings" in Kent and offers "support and consultations on any online safety concerns regarding children, young people and adults across the council [area]."

Working with police, social services, health and libraries, the e-Safety Officer helps develop policies and documents for educational settings and also delivers "a variety of training to professionals so they can support and educate children, young people and their families." Individual schools generally have an e-Safety lead or coordinator – often a position filled by the school's child protection officer with training from the council's e-Safety Officer. According to Rebecca Avery (e-Safety Officer, Kent County Council), the reason for the connection between the positions is that "e-Safety is about safeguarding, not technology." In their


ONLINE: two graphic resources for this article:

Response to an Incident of Concern

Response to Incidence Flowchart

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approach to safeguarding, Kent County Council has delineated an explicit protocol for what they term an "e-safety incident" – this covers what we would term a *need* for protection under the *Child, Family, and Community Service Act of BC*, as well as for responding to other "at-risk" situations for students. This response protocol was adapted by Hengstler (2013) with the permission of

Kent County Council for use in BC schools. This protocol has recently been introduced to SD 33, Chilliwack, by Vancouver Island Faculty of Education student, Kris Sward, and tailored for her school use with the support of her principal, Charlotte DeBruyn and Constable Tobi Araki of the Chilliwack RCMP. 

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References for this article are available by emailing rwilliams@bcpvpa.bc.ca

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Cover Story

Our cover art this month is a detail of an acrylic on canvas by **Isabella Glasov** who is a grade 12 student at North Island Secondary School in Port McNeill.

We thank Isabella, her teacher, Kathleen McArthur, and Principal Jay Dixon for sharing this work.