



## Section 5

# Legal Duties of Operators





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# Legal Duties of Operators

This section looks at the legal duties of child care operators. These include:

- offering only those programs they are licensed to offer
- meeting the requirements of the Regulations
- posting a copy of the Act, Regulations, license, and notices in a place where they can be seen easily
- meeting the requirements of various other laws, including the duty to report suspected child abuse

# 5

## 27

An operator shall provide the prescribed programs and services to the children attending the child day care facility.

The Act, Section 27

### Type of Child Day Care Facility and Programs

#### Why

- To ensure that the operator is offering the type of child care allowed by the license

#### What it means

- The operator has a license to operate *either* a child day care centre, or a *family day home* and;
- The operator has a license to offer a certain program or programs of child day care – full-time, out-of-school, part-time, nursery school (preschool) day care.
- If an operator wants to run another type of facility or offer another type of child care program, the operator must apply for a license to do so, as described in *Section 2: Licenses*.

**8**

Every operator shall ensure that a child day care facility operated by the operator complies with the requirements and standards established by these regulations.

## Regulation 8

**Compliance with These Regulations****Why**

- To set minimum standards for the care, instruction and supervision of children
- To create consistency throughout licensed child care facilities in Nunavut for children, parents/families and operators

**What it means**

- The operator must know and follow the *Child Day Care Standards Regulations*.
- The operator must make sure that the facility and program meet all the requirements and standards of the Regulations.
- The Act and regulations set minimum standards in Nunavut. Operators may have further policies and procedures provided they are not inconsistent with the Act and regulations.

**How**

- Read the *Child Day Care Standards Regulations* and take the time to understand what they mean.
- Look up specific regulations when relevant or required.
- Some regulations are tied to specific sections of the *Child Day Care Act*. In order for the regulation to make sense, read the corresponding sections of the Act. (When the wording of a regulation includes "under section x of the Act," this is the cue to read that section of the Act.)
- Some regulations are difficult to understand. Ask the Regional Early Childhood Officers for help if you don't understand a regulation, or if you don't understand what the regulation is telling you to do.
- Go over relevant requirements of the *Child Day Care Act* and *Child Day Care Standards Regulations* as part of orientation of new staff and volunteers. (Relevant requirements are those that have to do with a specific job, the daily program, the day-to-day operation of the facility and emergency evacuation procedures.)
- Regardless of how familiar you are with the Act and Regulations, be prepared to refer to the current Act and Regulations often. (You can't memorize them all.)

## 11

Every operator shall post a copy of the Act and these regulations in a conspicuous location within the child day care facility.

### Regulation 11

## Post the Act and Regulations

#### Why

- To make the *Child Day Care Act* and *Child Day Care Standards Regulations* available to staff and parents

#### What it means

- The operator must post the *Child Day Care Act* and *Child Day Care Standards Regulations* in a place where they can be easily seen by anyone entering the facility.

#### How

- Choose a location, such as an information board, that is easily seen by anyone entering the facility.
- Post the *Child Day Care Act* and *Child Day Care Standards Regulations* on the information board.

**29**

An operator shall post in a conspicuous place in the child day care facility:

- (a) the license, the terms and conditions imposed on the license and any exemptions obtained under subsection 38(3);
- (b) any order issued under subsection 16(2) in respect of that facility; and
- (c) any notice of the suspension or revocation of a license.

The Act, Section 29

## Post License and Notices

### Why

- To show anyone entering the facility that the program has a license, as well as the status of that license

### What it means

- The operator must post the license in a place where it can be seen easily, and:
  1. If the license was issued with terms and conditions the letter explaining those terms and conditions, and a date by which they must be addressed, must be posted also.
  2. If the Minister has issued an order that exempts a person, or persons, from compliance with the Act or Regulations, that order must be posted also.
  3. If the Director has issued an order to the operator to take specific measures, that order must be posted also.
  4. If the Director has suspended or revoked the license, the notice of suspension or revocation must be posted also.

### How

- Post the license and, if applicable, the information in 1, 2, 3 and 4.
- Use the same information board, or location, where you posted the Act and Regulations
- See *What to do if an inspector requires improvements* after Regulation 2(7).

**9**

Every operator shall comply with:

- (a) The *Hazardous Products Act* (Canada);
- (b) The *Controlled Drugs and Substances Act (Narcotic Control Act)* (Canada);
- (c) The *National Building Code* (Canada);
- (d) The *National Fire Code* (Canada);
- (e) The firearms provisions of the *Criminal Code* (Canada);
- (f) The *Child and Family Services Act (Child Welfare Act)* (Nunavut);
- (g) The *Public Health Act* (Nunavut).

## Regulation 9

**Compliance With Other Legislation****Why**

- To ensure that child care facilities in Nunavut comply with health and safety regulations outlined in specific federal and territorial laws

**What it means**

- The operator must meet the requirements of the federal and territorial laws in the shaded box, as they relate to the operation of a child care facility and the delivery of an early childhood program.
- During their annual inspections the Regional Early Childhood Officer, Fire Marshal and EHO will check to see that facility/ operator meets the requirements of laws in the shaded box as they apply to the child care facility and/or the operator.
- If the Regional Early Childhood Officer, Fire Inspector or EHO require any changes or improvements, see *What to do if an inspector requires improvements* after Regulation 2(7).

**How**

- Laws are difficult to read. The Regional Early Childhood Officer, Fire Marshal and EHO will help you understand what they are looking for and help you meet the requirements of the various Acts as they apply to a child care facility.
- Make sure staff and volunteers are aware of any requirements.
- Keep copies of inspection reports showing that the facility/ operator meets the requirements of the various laws.
- The *Hazardous Products Act* is concerned with products, materials or substances that contain any product that is likely to be a danger to people's health or safety – for example products that are poisonous, explosive, etc. Many products that have been designed for children are now included in a Table of Banned Items – e.g., baby walkers, some infant car seats, and toys that contain heavy metals or toxic materials. Other children's products have to meet standards and are included in a Table of Regulated Items – e.g., baby gates, child restraint systems and cribs.
- The *Controlled Drugs and Substances Act* focuses on safe storage of any drugs and medications to ensure that children cannot access them.



- The *National Building Code* sets requirements for the design and construction of new buildings or substantial renovations to existing buildings. If you plan to build or renovate the facility you will have to meet the requirements of the National Building Code. Hire an experienced, qualified contractor who understands the requirements of the NBC. The construction or renovation will be inspected by the Fire Marshal, or in some communities, a municipal building inspector.
- The *National Fire Code* sets minimum fire safety requirements for buildings and addresses fire protection/prevention procedures in the ongoing operation of a building. Take direction from the Fire Marshal for any conditions that need to be addressed to ensure the safety of children, staff and volunteers.
- The firearms provisions of the *Criminal Code* set requirements for legal acquisition of firearms, as well as safe storage, handling and transportation of firearms.
- The *Child and Family Services Act* requires anyone who suspects, or knows that a child may be the victim of child abuse or neglect to report immediately to a Child Protection Worker.
- The requirements of the *Public Health Act* and the role of EHOs are identified throughout the *Child Day Care Regulations*, in the areas of:
  - application for a license,
  - requirements if there are animals in the facility,
  - regular cleaning and sanitizing of all furnishings and equipment,
  - safe food storage, handling and serving,
  - sanitation of toilet and washing areas, including diapering areas and procedures,
  - satisfactory containers and procedures for removing garbage and refuse, including diapers,
  - prevention and management of communicable diseases.

**9(f)**

An operator shall ensure that each staff person is informed of, and understands, his or her duty under the *Child and Family Services Act* to report to a Child Protection Worker if the staff person has information or reasonable grounds to believe that a child needs protection under that Act.

The *Child and Family Services Act* states:

8(1) A person who has information or reasonable grounds to believe that a child needs protection shall, without delay, report the matter

- (a) To a Child Protection Worker; or
- (b) If a Child Protection Worker is not available, to a peace officer or an authorized person.

(1.1) No person shall maliciously make a false report claiming that a child needs or may need protection.

(2) Subsection (1) applies notwithstanding that the information reported is confidential or privileged.

## Regulation 9(f)

**Duty to Suspected Child Abuse****Why**

- To ensure that any and all suspicion or evidence of child abuse is reported to a Child Protection Worker, without delay
- To protect operators and staff of child care facilities if they report possible child abuse

**What it means**

- A child that needs or may need protection is a child who is or may be a victim of child abuse. This includes physical abuse, psychological abuse, emotional abuse, sexual abuse, and neglect.
- If anyone operating or working in a child care facility suspects or has evidence that a child needs or may need protection then he or she must report immediately to a Child Protection Worker (or other authorized person such as the RCMP if the child protection worker is not available.)
- The person reporting does not have to have proof that a child needs or may need protection. Finding proof, or determining if a child needs protection or not, is the job of the Child Protection Worker.
- If the operator or staff member does not report a child needing protection they could be fined up to \$5,000, they could go to jail for up to 6 months, or both. (Child and Family Services Act, Section 8(5).)
- No one can sue or take other action against a person who reports a child that needs or may need protection, unless it was done maliciously.
- The protection of a child's safety and well-being take precedence over confidentiality. Providing information to a Child Protection Worker (or other authorized person such as the RCMP if the Child Protection Worker is not available) does not breach confidentiality requirements.

(3) No action shall be commenced against a person for reporting information in accordance with this section unless it is done maliciously.

(4) Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor's client.

(5) Every person who contravenes subsection (1) or (1.1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding six months or to both.

## How

- Know who the Child Protection Worker is in the community, and how to contact them.
- Report suspected child abuse to a Child Protection Worker without delay:
  - You don't have to have proof.
  - You don't have to tell your supervisor, or anyone else, first.
  - You can't get someone else to do it for you.
  - You just do it!
- If the Child Protection Worker is not available, report to a peace officer (RCMP).
- Do not contact the parents about the report.
- Do not talk to others, including other staff members, about the report.
- Cooperate with the Child Protection Worker investigating possible child abuse, as needed.
- Understand that the duty to report is "simple" but at the same time it may be very difficult because of the emotions that it creates. This is normal, but it means that a person reporting possible abuse might need support, such as talking to a counselor.
- Inform the Regional Early Childhood Officer that a report of suspected child abuse has been made. Do not provide details.

## Centre operators

- Review the duty to report with staff, and what that means, every year.
- Ask the Child Protection Worker to train staff to recognize the signs of possible abuse.
- If you develop procedures for reporting possible abuse make sure they are legal and support the *Child and Family Services Act*:
  - It may be the policy of a child care program that a person making a verbal report informs their supervisor after they have done so (unless it is the supervisor who is suspected of child abuse.)
  - It should NOT be a policy of the facility for the person making a report to provide details to their supervisor. Details are provided only to the Child Protection Worker investigating the report of possible abuse.
  - Operators may want to develop a written form for the staff member to use after a verbal report has been made. This is not required by law, but it may help the person who made the verbal report record important details while still fresh in his or her mind. The person completing the report should store it in a confidential manner – it should not go "on file" at the facility – and destroy it once they know that the Child Protection Worker has received it.

