



Mandatory Reporting: When is it Required? (Sexual Abuse Matters - Employers / Registrants who are Employers)

When is a Mandatory Report Required?

The *Regulated Health Professions Act* (RHPA) requires health professionals to file a mandatory report if they have “reasonable grounds” to believe that an OT or member of another regulated health care profession has sexually abused a client.

What is Sexual Abuse?

Sexual abuse is defined as:

- sexual intercourse or other forms of physical sexual relations between the OT and the client;
- touching, of a sexual nature, of the client by the OT; or
- behaviour or remarks of a sexual nature by the OT towards the client.

Related to sexual abuse of a client, the following individuals must make a report:

- An OT who has reasonable grounds to believe that another therapist or regulated healthcare provider has sexually abused a client
- An individual who operates a facility where the OT practises and believes that the OT may have sexually abused a client
- A member of a regulated health profession who believes that another member of a regulated health profession has sexually abused a client

In most cases, the mandatory report must be made within thirty days of the individual becoming aware of the fact that a therapist may have sexually abused a client. The report is made to the Registrar of the relevant College.

***If the person who is to file the report believes that the therapist is continuing to sexually abuse the client or other clients, the report should be made right away.

In the province of Ontario, there are currently 22 regulated health professions, they are:

Audiologists and Speech Language Pathologists, Dietitians, Opticians, Chiropodists/Podiatrists, Massage Therapists, Optometrists, Chiropractors, Physicians and Surgeons, Dental Hygienists, Pharmacists, Nurses, Physiotherapists, Dental Surgeons, Denturists, Midwives, Occupational Therapists, Dental Technologists, Psychologists, Respiratory Therapists, Medical Radiation Technologists, Medical Laboratory Technologists and the Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario.

What happens if the client tells me about the sexual abuse but refuses to tell me the name of the therapist?

In this case, it would be important to have a discussion with the client as to the seriousness of the allegation and the right of the client to have this addressed by that therapist’s regulatory body. The OT may also suggest that this individual contact the College’s Manager of Investigations & Resolutions anonymously for more information.

If, despite all efforts, the client refuses to provide the name of the therapist, the person who has been made aware of the incident is not required to file a report with the College.

I am providing psychotherapy to a therapist and I have become aware that the therapist has sexually abused a client, do I have to file a report?

Yes. In addition to following the reporting obligations, you are also required, if you are able, to provide your opinion as to whether the therapist will sexually abuse clients in the future. In addition, if you stop providing psychotherapy services to the therapist, you are required to advise the College.

Do I need the client's consent to submit their name in the report?

Yes. The individual filing the report must obtain the client's consent to include their name in the report. If the client is incapable of providing consent, their representative may provide consent on their behalf.

If the client refuses to provide their consent, a report with the client's name must still be filed with the College.

Do I tell the client that I am filing the report?

You should advise the client of your professional obligation to file the report and suggest that they may wish to contact the College's Manager of Investigations & Resolutions if they would like additional information.

What information should the report contain?

The report must include the name and contact information for the person filing the report, the name of the therapist who is the subject of the report, the name of the client (if their consent has been obtained) and an explanation of the alleged sexual abuse. As the Registrar must determine if an investigation is warranted, it is helpful to provide as much information as possible.

What happens if I as the employer or colleague fail to submit the report?

Section 93.4 of the RHPA suggests that one is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 if they do not file a report in accordance with the reporting obligations.

What happens once the College receives the report?

The Office of the Registrar advises the ICR Committee of the report and provides them with the information received. Based on a review of that information, the ICR Committee may approve the appointment of an investigator to gather information related to the case. The Committee may also determine that the required information could be obtained without using the services of an investigator and will advise the Office of the Registrar accordingly.

In rare cases some investigation might take place before the therapist is notified of the report (e.g. to preserve evidence).

How does a therapist respond to the report?

The ICR Committee will not make a final decision on a matter without the therapist having the opportunity to respond to the report in writing or by way of meeting with an investigator. The investigator may be required to meet with witnesses which may include clients, colleagues, the employer, etc. At the conclusion of the initial interview process, the investigator, if one has been appointed, will generally meet with the therapist to discuss the concerns raised.

Can I contact the College during the process?

Yes and No. As the therapist and the College are the only parties involved in the process, the case can only be discussed with the therapist. That being said, if you have questions of an administrative nature, please feel free to contact the Manager, Investigations & Resolutions at any time during the process.

How long does the process take?

There are no timelines associated with these types of investigations as some investigations are quite detailed and extensive while others are relatively short. Given the sensitive nature of sexual abuse cases, these matters are processed as quickly as possible. The therapist may contact the Manager at any time during the process for a status update. The Committee is thoughtful of the need to ensure that the investigation is balanced, fair, objective and complete. The Committee will not make a decision without the benefit of having full information.

Is the process confidential?

Only the Registrar, the Manager and the Committee members reviewing the case file are aware of the particulars of a case. During the investigation, other individuals may become aware of some aspects of the case if they are required to provide information to the College.

Generally, only the therapist, the Registrar, the Manager and the Committee members are aware of the outcome of the process unless there is a referral to the Fitness to Practise Committee or the Discipline Committee. In these cases other Committee members and agents of the affected Committees may become aware of the case.

If a case is referred to the Discipline Committee for a hearing, the therapist will receive a copy of the allegations. This hearings process is public and information related to the hearing will be made available to the public.

If an Investigator is appointed, do I have to cooperate?

If you are an OT, in accordance with the College's professional misconduct regulation, it is considered professional misconduct for a Registrant to not cooperate with a College investigation. If you are not an OT and the College requires information from you to assist with the investigation, a summons can be issued compelling you to provide the required information.

If an Investigator is appointed, what will they do?

If an investigator is appointed to investigate a matter before the College, the investigator may contact the employer, the client, the therapist and any other individuals who may assist the Committee in understanding the nature of the concerns that led to the filing of the report.

If an investigator wants to meet with you, they will contact you and advise you that they have been asked to discuss a certain matter with you. They will provide you with their name, identification upon request and copy of a Notice of Appointment. The investigator works within the provisions of the *Public Inquiries Act*. It may be appropriate that the investigator discuss the matter with you over the phone or s/he may need to meet with you in person. The investigator will also be able to provide you with an idea as to the type of information that she/he is seeking and any information that she/he will require that you provide during the meeting.

The investigator may:

- enter at any reasonable time the business premises of the therapist and examine anything relevant to the investigation;
- copy any documents that s/he feels is related to the investigation; or
- remove documents or objects if it is not practical to copy the document or object in the place that it was reviewed, or if a copy is not sufficient for the purpose of the investigation.

The documents/objects will be returned within a reasonable timeframe.

The information obtained by the investigator may be used as evidence in proceedings before the College. At the conclusion of the investigation, the Registrar will report the results to the Committee.

Can the ICR Committee revoke a Registrant's Certificate of Registration?

No. A Registrant's certificate of registration may only be revoked as a result of a finding made by either the Discipline Committee or the Fitness to Practice Committee.

In rare circumstances, the ICR Committee may direct the Registrar to suspend or impose terms, conditions or limitations on a Registrant's certificate of registration through an Interim Order. This will only be considered in cases where the matter has been referred to the Discipline Committee or the Fitness to Practice Committee for a hearing and it is the opinion of the ICR Committee that immediate action is required to protect the public interest.

What decisions can the ICR Committee make?

The ICR Committee may:

1. Refer specified allegations to the Discipline Committee for a hearing;
2. Investigate the member's capacity;
3. Require the member to appear before a panel of the ICRC to be cautioned;
4. Take other appropriate action such as requiring the member to undergo continuing education or remediation; or
5. Take no further action.

Do I Learn of the Final Decision?

No. Only the OT will receive a copy of the Committee's decision in writing.

Can a Registrant Appeal the Decision?

No. Decisions regarding mandatory reports are non-appealable.