

Guidelines for Expunction Hearings The Register

(Revised August 1987)

Child Abuse

The following guidelines are intended to assist the courts in the expunction process. They are not intended to be a substitute for the provisions of the Act.

INTERIM GUIDELINES FOR EXPUNCTION HEARINGS

THE REGISTER

The Register is a public document and its contents are available to all. It is the responsibility of the courts to ensure that the Register is accurate and up-to-date. The courts should take steps to ensure that the Register is kept current and that any errors are corrected as soon as possible.

The courts should also ensure that the Register is accessible to the public. This may involve providing copies of the Register to libraries, community centers, and other public facilities. The courts should also consider the cost of providing copies of the Register to the public and seek ways to minimize these costs.

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INTERIM GUIDELINES FOR EXPUNCTION HEARINGS

THE CHILD ABUSE REGISTER

(THE CHILD AND FAMILY SERVICES ACT, 1984, SUBSECTIONS (3) TO (12)
OF SECTION 72)

A WORD ABOUT THIS EDITION

In June 1982, a booklet was first published to familiarize children's aid societies and individuals with some of the more practical aspects of the Provincial Child Abuse Register (the "Register") and Expunction Hearings.

With the growing emphasis over the past few years on the rights of individuals, many contentious issues have arisen with respect to the nature and functioning of the Register. A review of those complex issues is currently underway.

With the possibility of significant revisions as a result of that study, the following guidelines have not been significantly altered in this edition. The booklet has, however, been updated on an interim basis, to reflect appropriate references to the Child and Family Services Act, 1984.

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Introduction

The practice and procedures outlined in this paper have been developed by the Ministry for the following reasons:

1. To encourage an expeditious handling of the registered person's request that his/her name be removed from the Province's Child Abuse Register (the "Register").
2. To maximize the flexibility permitted and indeed encouraged by the Child and Family Services Act (CFSA) and the Statutory Powers Procedures Act both of which dictate procedure for expunction matters.
3. To ensure as far as possible that matters properly at issue in an expunction hearing under s.72(4) of the CFSA remain distinct from the separate responsibility of the court to determine the child's apparent need for protection under s.37(2) of the Act.

These guidelines are for the use and information of the Director of the Provincial Child Abuse Register (the "Director"), persons designated by the Director to conduct an expunction hearing on the Director's behalf, the registered person who is requesting that his/her name be removed from the Register, the Children's Aid Society and any other person whom the Director specifies as a party to the Hearing (see s.72(7) of the CFSA).

Placement of a Name on the Register

There are two requirements which must be fulfilled in order to place a name on the Register. They are:

- a) that the information of alleged abuse has been verified in accordance with the Standards and Guidelines for the Management of Child Abuse Cases, February, 1981, p.p.11 to 25.
- b) that the alleged abuse is sufficiently toward the "serious" end of the abuse spectrum, or is clearly enough part of a pattern or condition of abuse, for it to warrant a report to the Register. Reportable abuse is discussed in Interim Guidelines for Reporting to the Child Abuse Register, August, 1987.

These requirements are the two specific matters the Director for the Register must ensure have been properly addressed by the Children's Aid Society which has submitted the report.

When an individual's name has been placed on the Register, he/she is sent written notice that the name has been so placed, the reason for the placement and the fact that they have the right to request an expunction hearing.

Requests for Expunction

Requests for expunction should be received in writing by the Director except in unusual circumstances. They may originate with the alleged abuser, his/her lawyer or other agent, or a Children's Aid Society.

Care must be taken in the case of a telephone call to ensure that the person calling is in fact the one to whom a letter has been written or a bona fide agent of that person. This can normally be done by a return phone call. Without revealing any details of the registration itself information may and should be given about the purpose and general procedures of the Register and expunction hearings.

Frequently reassurance about the confidential nature of the Register or explanation about "reportable" abuse and what may cause an expunction, and/or review of the procedure for a hearing may result in the withdrawal of requests for expunction.

However, when the alleged abuser or his/her agent requests expunction, the Director of the Register may:

- a) exercise the authority given to him by s.72(4)(a) of the CFSA and upon consultation with the reporting Society remove the name or otherwise amend the Register; or

(b) of the CFSA before

The issues to be determined by the Director are:

- a) whether the information contained in the Register is in error (e.g. the alleged abuse did not occur, or the person named is not the person responsible for the abuse); and
- b) whether the information should not be in the Register (e.g. the abuse is not "reportable abuse" as defined in the Interim Guidelines for Reporting to the Register).

Once a request has been made, the following procedures shall be followed:

The Director contacts the children's aid society to determine if the two requirements for placing a name on the Register have been met, and/or if anything has occurred since the registration which would warrant the removal of the name.

If the requirements have not been met, or if there is other reason to question the registration, the children's aid society recommends to the Director in writing that the name be expunged. If the Director agrees with the recommendation, the alleged abuser's name is expunged. The alleged abuser and the children's aid society are informed of the expunction in writing.

If the requirements have been met and nothing has occurred since the registration which would warrant the removal of the name, the children's aid society recommends that the name remain on the Register. If the Director agrees with the recommendation, the decision as to whether or not the name

should be removed will be made after an expunction hearing has been held by a hearing officer appointed by the Director.

The outcome of a related protection or criminal court proceeding may not necessarily affect registration. However, if there is a finding of fact - as opposed to charges withdrawn, stayed or dismissed that indicates:

- a) the incident giving rise to criminal charges and/or child welfare application was not child abuse, or
- b) the person named as alleged abuser was not responsible for the abuse,

then expunction will be considered in light of the court's findings, bearing in mind that entries in the Register should not be limited to cases in which abuse has been established by standards of proof applicable to criminal or civil action.

In some circumstances, a name may be expunged without a request from an alleged abuser or a children's aid society, at the initiative of the Director, for example, if an abuser dies. Normally, however, such action will be taken at the request of a children's aid society.

The Director retains the right in all cases to decide whether a name should be expunged, or whether an expunction hearing should be held to decide this issue.

Preliminary Steps to an Expunction Hearing

The Director informs the alleged abuser or his agent in writing that to have his/her name removed from the Register, the alleged abuser has the right to a hearing under s.72(4) of the CFSA. If the alleged abuser notifies the Director that he/she wishes to proceed, steps are then taken to set up a hearing.

The first step is the appointment by the Director of a hearing officer who then assumes responsibility for the conduct of the hearing and the decision regarding expunction. The hearing officer will be a person with expert knowledge of the CFSA and Statutory Powers Procedures Act and will be thoroughly versed in the handling of such hearings.

It is a basic principle of law that a party has a right to know the case he/she has to meet - before he/she has to meet it. For the purposes of an expunction hearing, that means that the registered person (or his agent) is entitled to reasonable information about the allegations made against him/her (see s.8 of the Statutory Powers Procedures Act). Normally, the alleged abuser will have been told by the children's aid society when the investigation and verification of the abuse is complete that he/she will be reported to the Register and the reasons for the report.

If the alleged abuser requests information about the allegations against him/her when a hearing has been arranged, the society should provide him/her or his/her agent with any written or documentary evidence which it will present.

Similar information may be requested by the society from the alleged abuser or his/her agent.

If court proceedings are pending or in process, either party may request an adjournment of the hearing to a later date.

Once the arrangements for an expunction hearing have been completed, parties must be given formal notice at least 10 days in advance of the hearing date.

The Hearing

The hearing officer should know virtually nothing about the case before the hearing in order to ensure that his/her objectivity is maintained.

The issues to be determined by the hearing officer are:

- a) whether the information contained in the Register is in error (e.g., the alleged abuse did not occur, or the person named is not responsible for the abuse);
- b) whether the information should not be in the Register, e.g. the abuse is not "reportable abuse" as defined in the Interim Guidelines for Reporting to the Register.

The type of questions which the hearing officer should bear in mind are:

What facts at the hearing indicate actual abuse of the child named in the report to the Register?

What facts point to the responsibility of the registered person for the alleged abuse?

How credible is the evidence?

The hearing officer has the right to conduct the hearing as he/she sees fit subject to the provisions of the Statutory Powers Procedures Act and the CFSA.

- 1) The hearings are held in the absence of the public, and no media representatives are permitted to attend (s.72(10), CFSA).
- 2) No person can publish the name, or identifying information with respect to a witness or a party to the proceeding. (s.72(11), CFSA).
- 3) If a child is to be a witness at a hearing, the hearing officer will ensure that the question of representation for the child has been thoroughly considered.
- 4) "Party" status allows a person or agency to be represented by counsel or an agent, but parties may choose not to be represented. Parties may call witnesses and present submissions. They may also cross-examine witnesses to the extent required for a full and fair disclosure of the facts. Normally, no character witnesses will be heard.

- 5) Witnesses may be asked by the hearing officer to take an oath or make an affirmation to tell the truth. Witnesses who are not parties to the hearing may be advised by counsel or an agent as to their rights but that counsel or agent takes no further part in the hearing, unless the hearing officer permits. Counsel or agent for a witness who is not a party can only be present in the hearing room when that witness is giving evidence.
- 6) The hearing officer should exclude witnesses who are not parties until they testify.
- 7) Hearsay evidence is admissible, but will be weighed accordingly.
- 8) The hearing officer has discretion under s.7 of the Statutory Powers Procedures Act to proceed with the hearing, even if a party does not appear, whether that party be the registered person, the children's aid society or any other person specified as a party by the Director. If the applicant does not appear, and gives no acceptable reason for his/her absence, no hearing is necessary. The children's aid society should simply make a summary statement for the record.
- 9) A court reporter may not necessarily be present, nor a transcript prepared. Notes and recording by the hearing officer may be sufficient. If a court reporter and/or transcript are requested by a party to the hearing or by the Ministry, the party who makes the request is responsible for the costs. Advance notice of a request for a reporter

must be given to the Director so that the necessary arrangements can be made.

10) Hearings proceed as follows:

- a) The children's aid society presents evidence and argument to show how the case has been investigated and verified, and how a judgment has been made to report to the Register. The society is required to present credible evidence to show that the abuse occurred, and credible evidence to show that the person named as alleged abuser was responsible for the abuse. Although the hearing is concerned with a specific incident(s) of abuse, the society may present evidence which points to a "condition" or "pattern" of abuse in support of its decision to place the name on the Register.

- b) The applicant is afforded the opportunity to cross-examine witnesses called by the children's aid society and to present evidence and argument to show that the investigation and verification were incomplete or in error, or that the abuse was not reportable.

It is not necessary to prove the information on a balance of probabilities or beyond a reasonable doubt. All that is required is some credible evidence supporting the registration. The hearing officer will permit reply evidence if necessary.

Post Hearing Procedures

The hearing officer will submit a written decision with reasons to the Director of the Register and all parties to the hearing. The decision of the hearing officer should be included in the children's aid society's records.

The Director will either direct that the name remain on the Register, or be expunged, and will inform the parties in writing of his decision.

An appeal may be made to the Divisional Court from a decision of the hearing officer (s.72(9) CFSA).

SUMMARY

The Child and Family Services Act gives alleged abusers named on the Child Abuse Register the right to request that their names be expunged.

The Director of the Provincial Child Abuse Register may grant such a request, or decide to give the alleged abuser an opportunity to have an expunction hearing before refusing the request.

If a hearing is to be held, the Director appoints a hearing officer and delegates the responsibility of deciding whether or not the name(s) should be expunged to that person after a full hearing of the case.