

**Quadruple Jeopardy:
Children's Aid Society Investigations in the Education Setting
CAPSLE 2012
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I. Introduction

In recent years there has been a significant increase in the number of investigations by Children's Aid Societies (CAS) across Ontario into allegations of inappropriate conduct by teachers. Many of the investigations conducted by the CAS agencies should never occur as the allegations on their face do not meet the threshold of potential child protections concerns. This paper will highlight why such matters are more appropriately addressed at the school or school board level.

School boards, administrators and teachers share a common understanding of the importance of child protection in the education setting and the crucial role that CAS agencies play in ensuring that children are safe. However, it does not follow that any and all allegations reported to the school administration about a teacher's alleged inappropriate conduct towards a student should result in a full blown CAS investigation. In some cases the call to the CAS should never be made. In other cases, the CAS upon being notified of the allegation should determine that the matter does not meet the required threshold for a child protection investigation.

This paper considers the implications for teachers, the education system and the child protection system more broadly of such allegations, including the involvement of the

police and the Ontario College of Teachers. This paper highlights the problems with the current system, including, why it is impractical for the province's broader child protection systems to apply in the school setting without taking into account the unique aspects of the school environment, duties and statutory obligations of teaching professionals. This paper considers the need for a more active approach to reporting of allegations to the CAS by school administrators and on the initial evaluation by CAS agencies.

II. The Child and Family Services Act

The *Child and Family Services Act*¹ governs CAS child protection investigations along with the Ontario Child Welfare Eligibility Spectrum². The paramount purpose of the CFSA is to promote the “best interests, protection and well being of children.”³ Among other things, the CFSA defines the functions of CAS agencies, defines when a child may be in need of protection and sets out the responsibilities of the CAS to investigate and provide services to children in need of protection from abuse or neglect. For the purposes of CAS involvement, a “child” is a person who is or appears to be sixteen (16) years of age or younger. Section 15(3) of the CFSA sets out the functions of CAS agencies. These functions include investigating “...allegations or evidence that children who are under the age of sixteen year or are in the society's care or under its

¹ R.S.O. 1990, CHAPTER C.11

² Eligibility Spectrum 2006 available at <http://www.oacas.org/pubs/oacas/eligibility/EligibilitySpectrum06nov1.pdf>

³ CFSA s. 1(1).

supervision may be in need of protection.” Section 15(3) also includes a catch-all clause that makes it a function of the CAS to “perform any other duties given to it by this or any other Act”.

Sections 37(2) and 72(1) are the key sections involved in the context of CAS investigations into alleged inappropriate conduct by teachers. These sections are discussed in more detail below.

a) When is a child in need of protection?

Child abuse is defined under Section 37(2) of CFSA. This section outlines the thirteen (13) grounds concerning when a child is in need of protection. Specifically, the CFSA provides that a child is in need of protection where,

- a) 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;
- b) 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;
- c) the child has been sexually molested 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 molestation or sexual exploitation and fails to protect the child;

- d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph (c);
- e) the child requires medical 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, or refuses or is unavailable or unable to consent to, the treatment;
- f) 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;
 - f.1) the child has suffered emotional harm of the kind described in subclause (i), (ii), (iii), (iv) or (v) of paragraph (f) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (i), (ii), (iii), (iv) or (v) of paragraph (f) 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;
 - g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (i), (ii), (iii), (iv) or (v) of paragraph (f) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- h) 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, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;
- i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her 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;

- j) the child is less than 12 years old 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, or refuses or is unavailable or unable to consent to, those services or treatment; or
- k) the child is less than 12 years old and has on more than one occasion injured another person or caused 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.

Allegations of inappropriate conduct by teachers towards students fall within subsections (a) through (d), (f) and (g). Most often, allegations concerning teacher misconduct involve allegations of physical harm, risk of physical harm, emotional harm and/or risk of emotional harm, in accordance with subsections (a)(b)(f) or (g).

(b) The Duty to Report

An individual, including a principal, does not have to be certain that a child is in need of protection to make a report to the CAS. In fact, the threshold for reporting is quite low as a result of amendments to the CFSA, the most recent being in 2000.⁴ Section 72(1) of the CFSA provides that individuals have a duty to report where there are “reasonable grounds” to suspect that a child is in need of protection. “Reasonable

⁴ For details re the history of the child protection legislation and its evolution see pp 6-8 “I want to cooperate but”: Children's Aid Society and Police Investigations into Teacher Conduct. By Patricia D'Heureux and Janina Fogels. CAPSLE 2009.

grounds” refers to the information that an average person, exercising normal and honest judgment, would need in order to make a decision to report an allegation.⁵

While all individuals have this duty to report, this duty is heightened for professionals, such as teachers and principals. Professionals who fail to report that a child is in need of protection could be subject to monetary fines. The CFSA provides that any professionals who fail to make such a report concerning information obtained in the course of their professional duties may be liable on conviction to a fine up to \$1000.⁶ In addition, a failure to comply with the CFSA is a defined ground of professional misconduct under the *Ontario College of Teachers Act 1996*. Regulation 437/97-*Professional Misconduct* states that it is professional misconduct to fail to comply with one’s duty under the CFSA. Therefore, a principal or teacher who fails to make a report where a child is in need of protection could be the subject of a College of Teachers complaint. The CFSA provides protection for those who make reports to the CFSA concerning child protection issues. However, notably, the protection is limited in that it does not apply where the person acted maliciously or without reasonable grounds for the suspicion.⁷

⁵ Reporting Child Abuse and Neglect – it’s your Duty – Your responsibilities under the Child and Family Services Act at Pg 2

⁶ CFSA s 72 (4), (6.2).

⁷ CFSA 72(7).

III. What occurs when a report is made to the CAS by an administrator?

When a report is made to the CAS by a school principal the process generally unfolds as follows. The principal will inform the teacher that an allegation has been made against her and that she is suspended from teaching effective immediately. In most instances, the teacher must then leave the school premises immediately and remain off school property until further notice from the school board (ie. following the completion of the CAS investigation). In many cases, at this stage the teacher is not provided with any information about the nature of the allegation that has been made against them. In fact many school board protocols specifically advise principals not to provide the teacher with any information whatsoever when advising them that an allegation has been made against them concerning their alleged conduct with a student. For a teacher whose calling is the care and nurturing of students an allegation of child abuse or neglect is shocking and the effects can be devastating in many cases. Not surprisingly, being suspended from teaching can be extremely stressful and disruptive, and in many cases embarrassing for the teacher. In the case of occasional teachers, being suspended from teaching can also have financial implications as School Boards generally block occasional teachers from teaching during CAS investigations, and they are therefore without any income from the School Board during this period. Although collective agreements do not currently enshrine pay protection for teachers involved in CAS investigations, most school boards, suspend permanent teachers with pay pending the outcome of the CAS investigation.

Once suspended from teaching the teacher will generally be “assigned home”(as mentioned above) or, less frequently, the teacher will be assigned to non-teaching duties such as working at the school board office on a variety of possible tasks. The teacher must then wait to be contacted by the CAS case worker assigned to investigate the allegation made against them. This can occur quickly; however, in many cases the teacher will wait days or weeks prior to being contacted. During this time period the teacher may also be contacted by the police. In matters where the police are involved, the police will often advise the teacher and/or her legal counsel at the outset that they do not intend to be involved any further as the matter is not one that merits police involvement. The police may also request that the teacher meet to provide her account of the events to enable the police simply to close their file, request that the teacher meet so that the police can issue a formal caution, or in some rare cases, the police will advise that they are proceeding with criminal charges and legal counsel will assist in facilitating the surrender of the teacher to the police.

Once contacted by the CAS a process generally unfolds whereby the teacher (through legal counsel) is advised of the nature of the allegation and a response is provided to the CAS. This can occur in writing or through a face-to-face meeting. The CAS will then make a determination, using the balance of probabilities standard, concerning the outcome and whether the child protection concern is “verified” “not verified” or “inconclusive”. Inconclusive findings in investigations of teacher misconduct are rare.

Most often, the CAS will either make a finding of “verified” or “not verified” concerning the alleged child protection concern.

The outcome is communicated to the teacher in a letter. The school board will either be copied on the letter or it will receive a comparable letter advising of the outcome and that the CAS has completed its investigation. These investigations can range in length from several days to in some cases over 60 days. There is no formal right of appeal to a CAS outcome in a child protection investigation. Thus, once an outcome has been released there is little to no opportunity to alter the outcome, regardless of any additional information and rebuttal to the outcome that is provided.

Following the completion of the CAS investigation, and the receipt of the outcome letter, the school board will then determine whether or not it will conduct its own investigation into the alleged conduct. Such investigations are not grounded in child protection concerns. Rather, they are based on the employment relationship between the teacher and the school board and the collective agreement which governs that relationship. For this reason, an investigation by the school board is separate and apart from any CAS investigation and the fact of a CAS investigation and the CAS finding should have no bearing on the school board’s investigation. However, in reality, a verification or substantiation of inappropriate conduct with a student can have a very persuasive effect on school boards.

Consequences to teachers of CAS Investigations

Regardless of the outcome, a CAS investigation can have significant widespread consequences for a teacher. As discussed above, a report to the CAS can also result in an investigation by the local police division, a further investigation (and potentially disciplinary measures) by the school board and a complaint to the Ontario College of Teachers (“OCOT”). Put very simply, one allegation of misconduct can bring about a situation of quadruple jeopardy for the teacher. In terms of the OCOT, school boards are not obligated to inform teachers when a complaint has been made about them to the OCOT, a significant period of time can pass – six (6) months is not unusual- before a teacher becomes aware of the complaint and then must relive the matter and the events in question once again.

The reporting and subsequent investigation of an allegation by the CAS, impacts teachers both professionally and on a personal level and can result in reputation damage and emotional distress on the part of the teacher. The longer the investigation, the greater the impact is on the teacher. Moreover, investigations by the CAS agencies often have greater implications on teachers in smaller communities where word often spreads quickly and where the community frequently becomes apprised of the fact that the teacher is under investigation. This is particularly difficult for a teacher who denies engaging in any misconduct whatsoever but where the perception in the community is that the fact that they are under investigation means that

they must be guilty of some wrongdoing. In small communities, this perception can spread like wildfire and irreparably tarnish a teacher's reputation and career.

Regardless of the outcome of a CAS investigation, the matter is documented on the permanent provincial database. This database is used by child protection agencies throughout the province to identify patterns concerning individuals, including teachers. When an allegation is first referred to the CAS, the case worker searches the provincial database to determine whether there is any record of contact between the CAS and teacher that may be relevant in determining whether or not there are reasonable and probable grounds to believe that the child in question is in need of protection. The Child Protection Standards provide that when there is an indication on the database concerning previous contact by a Children's Aid Society, the relevant information from the database is added to the case record for the current matter.⁸

As a result, a teacher who is the subject of an investigation by the CAS into an allegation that did not meet the threshold for reporting is left with a permanent record of an allegation having being made against her. Also, quite frequently, allegations are made against teachers which are false and completely lacking in merit. Unfortunately, this is an occupational hazard that comes along with teaching in today's day and age – an occupational hazard which can impact directly on a teacher's employment and professional career. However, the fact that an allegation was determined to be frivolous

⁸ <http://www.children.gov.on.ca/htdocs/English/topics/childrensaidd/childprotectionstandards.aspx>

or a complete concoction by the student or referral source has no bearing on the inclusion of the matter on the database. Such matters not exempt from recording on the permanent provincial database. As a teacher having your name recorded on a child protection database when you have engaged in absolutely no wrongdoing whatsoever, whether that is due to a false allegation or a finding that child protection concern is not verified, is problematic and understandably causes many teachers significant concern.

An additional consequence and one that should not be viewed lightly is the damage that can occur to teachers' relationships with their students. Where an allegation concerns a student, the CAS will often interview other students in the teacher's class either because they are alleged witnesses to the events in question or simply to determine the credibility of the alleged conduct. Such interviews can cause irreparable damage to teachers' reputation with their students and, more broadly, in the school community as a whole, regardless of the actual outcome of the CAS investigation.

In light of all of the foregoing, when an allegation of misconduct is investigated by the CAS where it is apparent that the matter does not meet the threshold required by the legislation this causes additional concern for both teachers and their unions as a negative CAS finding or negative comments about the teacher in the CAS outcome letter, could lead to a skewed interpretation of the events and subsequent discipline by the school and potentially a report to the OCOT. Put simply, a CAS investigation can cause an entire series of events to unfold that may not have been warranted in the first place.

IV. Preliminary Evaluation of Reasonable Grounds

The fact that a single report to the CAS has the potential to result in quadruple jeopardy to a teacher, the fact that any investigation by the CAS results in a permanent record on the provincial database, and the fact that a CAS investigation can cause significant reputational damage to a teacher and damage their relationship with students, provides further support for the need for a meaningful preliminary inquiry as to whether an allegation regarding a teacher's conduct actually meets the threshold of reasonable ground to suspect that a child is in need of protection.

The responsibilities flowing from the CFSA are clear that it is not the role of administrators to investigate the allegations prior to contacting the CAS. It is also apparent upon review of the legislation that the section 72 duty to report contemplates a preliminary evaluation at the school level prior to a report being made. The legislation does not contemplate automatic reporting of allegations. However, in many cases this is exactly what occurs. Allegations are frequently reported where little to no preliminary evaluation was conducted at the school level. Rather, a significant number of allegations appear to be reported automatically, which, as discussed above, in many cases results in automatic full blown CAS investigations. Such allegations fall within the following broad categories:

- Allegations which are frivolous
- Allegations which are the result of a student lying

- Allegations which are ambiguous
- Allegations where there are no child protection concerns and where, on the face of the allegations, even if the allegations were true, there would not be any child protection concerns

(a) Administrators – The School Level

Once an allegation of conduct by a teacher towards a student is brought to the attention of a school board, the school board has a responsibility to ensure that the matter is appropriately addressed. This stems from the fact that school boards are the bodies which bear the primary responsibility for ensuring a safe school in which students learn and has an important role to play in the prevention and identification of child protection concerns and child abuse.

In light of this heightened duty to report (discussed in II (b) above) it is understandable why administrators often rush to report the allegation to the CAS without fully examining whether there are in fact “reasonable ground to suspect” that a child is in need of protection. However, when allegations are reported to the CAS where there are not “reasonable grounds” this has a negative effect both on the teacher in question and on the education and child protection system more broadly. In some cases, administrators will report an allegation to the CAS even where they have already concluded that the matter does not raise reasonable grounds to suspect that a child is in need of protection. Presumably, such instances of reporting would be reduced if the CFSA did

not contain a potential fine for the failure to report. Seeing as this is not likely to be revised any time in the near future, the focus must be placed on what exactly is required under the duty to report.

Depending on the length of the CAS investigation, and the number of CAS investigations over the course of a school year, the economic cost of a CAS investigation to the School Board can become quite significant. The result is that the school board must pay two teachers at the same time for the same teaching assignment. Occasional teachers replacing permanent teachers on suspension during a CAS investigation are commonly paid a daily rate, as per their collective agreement.

In addition to the economic costs, there is also the effect on the students in having their regular teacher absent from the classroom, without any explanation, for what can often end up being a significant period of time. This is an even greater concern for teachers involved in very specialized assignments, such as a teacher assigned to a class of six special education students, where the unique relationship between the students and the teacher is crucial to the proper functioning of the school day.

There are of course also economic costs to the child protection system, both in terms of the human resources and the actual dollars required to conduct and document child protection investigations. Therefore, in cases where the alleged conduct does not raise reasonable grounds to suspect that a child is in need of protection, yet the CAS is

involved and conducts an investigation into the conduct, resources are unnecessarily being expended rather than expending such resources in cases (in the education setting or otherwise) which actually involve real and pressing child protection concerns.

Principals must gather sufficient facts about the allegations reported to them about a teacher to enable them to make a preliminary determination about whether or not the allegations meets the threshold for reporting to the police and/or CAS without crossing over into the jurisdiction of the police and the CAS, who reserve the right to conduct the investigation. It is not the duty, nor is it advisable, for a principal to launch an investigation at this point in time. However, for there to be meaning to the wording “reasonable ground to suspect that a child is in need of protection” there must be more than simply automatic reporting or reporting with very little inquiry. School administrators should go right up to the boundary between inquiry and investigation. In addition to the fact that this is actually what is contemplated under the CFSA, the pressing costs – economic and otherwise - support the need for such inquiries.

Principals who receive reports of alleged conduct of a teacher should ask questions of the child, parent, or other referral source to clarify information and to determine whether or not there are reasonable grounds to suspect that the child is in need of protection. In cases where no harm is alleged and/or the alleged conduct, even if it did occur, could not have created any risk of harm, the threshold for reporting to the CAS is not met. Specifically, the principal should ask when, where (date, time, location) the alleged incident is said to have occurred, what the exact conduct is that is alleged and any

surrounding information and whether any injury was caused and how that injury was said to have been caused.

The need for screening becomes even clearer when specific situations are examined.

For example, should the following allegations lead to a CAS investigation?

- allegation that a teacher tapped a student on the shoulder using 2 fingers, causing no pain, injury or harm of any sort
- allegation that a teacher raised their voice towards a student in stating to the student “you need to eat your sandwich first, not your dunkaroos”
- allegation of physical contact by a student about a teacher who is involved in breaking up a fight between two high school students who are seconds away from punching each other and who in doing so makes minimal physical contact (no alleged injury) with the students to prevent the altercation from escalating and from a potential injury

Teachers across the province have been the subject of full blown CAS investigations in all of the above scenarios. The most common is where the allegations, even if true, would not in fact raise any child protection concerns. This problem begins with the reporting of the allegation by the principal and then the failure of the CAS to recognize that the matter does not meet the threshold for an investigation. Many allegations reported to the CAS are not verified. This is often because the allegations were untrue. Moreover, in many cases even where the alleged conduct is true, the CAS does not verify the allegation as it does not raise a child protection concern pursuant to the CFSA. Regardless of the outcome decision, those investigations are all entered into the provincial database.

Since 2003, all school-related incidents must follow the Provincial Protocol created by the Ministry of Education and the Ministry of Public Safety and Security.⁹ The Provincial Protocol requires that school boards comply with the “duty to report” under the CFSA. School boards are required to have their own protocols in place which flow directly from the requirements set out in Provincial Protocol. Individual school boards in Ontario have protocols in place for how situations of allegations are to be addressed. A review of a cross section of these protocols demonstrates that some of the protocols differ significantly and some place the emphasis more on the suspicion component of the duty to report than on the need for “reasonable grounds”. Many school board protocols, as mentioned above, highlight the CAS as having the onus to determine whether the threshold of “reasonable grounds” is met with a report when this is not what is required, nor is it the actual practice of the majority of CAS agencies. Moreover, while one of the goals of the Provincial Protocol is to facilitate consistency in the approach taken by school boards across Ontario, it is the actual application of the local school board protocol that leads to inconsistency from school to school and school board to school board

As with many things, at least part of the inconsistency in approach concerning the duty to report could be improved with training. School boards need to ensure that school administrators are trained as to what constitutes reasonable grounds, when the duty to report will be triggered and how to make proper inquiries prior to reporting. School

⁹ Available on the Ministry of Education website <http://www.edu.gov.on.ca>

administrators should be directed by school boards to ask preliminary questions concerning the allegations to best position themselves to make the determination as to whether the matter must be reported. Given the economic costs to school boards of CAS investigations and the impact on students and teachers set out in detail above, school boards should view such preliminary inquiries as a positive and necessary component of the process.

Where a matter does not give rise to reasonable grounds to suspect that a child is in need of protection, the matters should be resolved at the school level. The logical first step in many cases is for the parents of the student in question to set up a meeting with the teacher to find out exactly what occurred and to voice any concerns directly to the teacher. If at that point the parents are not satisfied with the teacher's response, the parents are able to raise their concerns with the school administration and ask that their concerns be addressed. It is then up to the school administration to determine how best to handle the situation. Alternatively, if the parents do not feel comfortable approaching the teacher directly, they can go straight to the school administration with their concerns. In addressing parental concerns the school administration may set up a meeting with all parties to discuss the events and the concerns, may have a discussion with the parties separately about the events and the concerns and may suggest possible ways to resolve the concerns.

(b) The CAS

There are 53 Children's Aid Societies across Ontario.¹⁰ These agencies are private, incorporated, not-for-profit agencies run by volunteer boards of directors in communities across the province. Currently, these agencies are funded entirely by government transfer funds, yet CAS agencies remain largely ungoverned by the usual controls applied to government funded services, agencies, boards or commissions. The reality is that there are no formal controls whatsoever on these agencies and their operations.

Investigations into teacher misconduct are handled by case workers at the particular CAS agency. Case workers consult with their supervisors at various stages throughout the process and CAS legal counsel are sometimes also involved. There is a lack of consistency in the manner in which case workers at the various agencies across Ontario handle investigations into allegations of misconduct by teachers. In some cases, the case worker will provide the only basic information concerning the allegation. In other cases, the case worker will divulge the specifics of the allegation as well as the bulk of the information that they have gathered in the investigation. And in some cases, the CAS agency, generally through legal counsel, will refuse to provide any information concerning the allegation to the teacher outside of a face to face meeting.¹¹ Overall,

¹⁰ Ontario Ministry of Children and Youth Services <http://www.children.gov.on.ca>

¹¹For more information re this process and issue re duty of procedural fairness see "I want to cooperate but": Children's Aid Society and Police Investigations into Teacher Conduct. By Patricia D'Heureux and Janina Fogels. CAPSLE 2009.

there is a lack of full disclosure to teachers about the allegations that are made against them. There is also often a lack of procedural fairness to the teacher during the investigation process. This lack of procedural fairness is particularly problematic given the situation of quadruple jeopardy that can result and the implications that a CAS investigation can have on a teacher's employment and professional reputation.

Quite often case workers conducting the investigations do not have any familiarity with the teaching profession, the dynamics of the school environment, or with the legal rights and responsibilities of teachers in maintaining order and discipline in the classroom. Their experience has been with child protection investigations in the family context. This can result in erroneous findings which fail to consider all of the relevant factors to school-based conduct. Some case workers do have more experience with investigations into teacher misconduct. These case workers are most often located in the larger city centres where there are a steady stream of allegations being made against teachers and a team of workers designated to handle community caregiver investigations. Unfortunately, such case workers are not the norm when the regions across the province are examined. Many case workers also tend to side with the student in question from the very beginning without hearing the teacher's account of the events. In this respect it is not unusual that, during the initial call with the CAS, when inquiries are made about the nature of the allegation, for the case worker to respond to the request for the details of the allegations that have been made against a teacher that

they shouldn't need to provide such details because "the teacher knows what they did" or words to that effect. Thus, again, the CAS teachers are often presumed to have engaged in the alleged misconduct from the outset.

In some instances, the case worker will advise that the information obtained through early interviews conducted does not raise child protection concerns, yet the case worker will insist that they require a face-to-face meeting or a response from the teacher to the allegation before closing its file. This is not what is contemplated by the legislation or the Child Protection Standards. This is not helpful to the system, to school boards or to teachers; however, it occurs regularly.

In other instances the CAS will not verify the allegation and/or child protection concern but will still include "conclusions", "opinions" or "recommendations" in the outcome letter which are highly damaging to teachers and go well beyond the role of the CAS in investigating teacher conduct in the school setting.

The lack of a threshold for a CAS child protection investigation is also cause for concern. Many school board protocols outline that, if the principal is unsure whether a matter gives rise to reasonable grounds to suspect that a child is in need of protection, the call should be placed and the determination should be left to the CAS. The reality, however, is that there is absolutely no requirement that the CAS agencies conduct an initial assessment before commencing an investigation to ensure that the reported allegations involve actions that fall within those listed in section 72(1) of the CFSA and

thus that trigger the duty to report. The CFSA does not contain any express precondition or requirement that the CAS assess whether there are reasonable grounds to suspect that a child is in need of protection before launching an investigation. The duty to report requires the person reporting to have “reasonable grounds” to suspect that a child is in need of protection. The reference to reasonable ground related only to potential informants, not the CAS in the assessment of a report. Moreover, section 75(3) states that a CAS that receives a section 72 reports relating to potential child abuse “shall forthwith” verify the reported information. From the CAS point of view, all reports must be investigated and the CAS investigates from the standpoint that their only mandate is to protect children from harm. For this among other reasons, the onus cannot be placed solely on the CAS. As set out above, there needs to be a more active approach to these matters at the school level before steps are taken to involve the CAS. While some screening of reports is done by the CAS, it is apparent that the process is insufficient and is inconsistently applied across the province.

V. Reforming the CAS System

The current model of CAS investigations is not sustainable. There has been a spike in investigations over the past number of years and this spike has been accompanied by a growing dissatisfaction with the process (or lack thereof in many cases) adopted by CAS agencies in conducting their investigations. The CAS routinely conducts full blown and lengthy investigations into reported allegations stemming from

an in-school incident, even in cases where these allegations, even if true, do not raise any child protection concerns.

Part of the problem is that the CFSA and the Child Protection Standards were not drafted for the school context. The Child Protection Standards themselves, which are supposed to guide investigations, do not adequately address in-school situations. A system whereby Standards were drafted specifically for the school context, designed to allow a more realistic and expeditious assessment of the report and its credibility and whether the child at the school actually is in need of protection would be much more practical than the system that is currently in place.

CAS agencies should be required to conduct preliminary assessments in all new cases involving allegations made against teachers. Until there is a change in the overall system, pressure should be placed on CAS agencies across Ontario, both by unions representing teachers and by school boards who are negatively affected when an investigation is undertaken, not to conduct investigations into a teacher's alleged conduct where the allegations on their face do not meet the threshold for a child protection investigation.

VI. Conclusion

In light of the significant implications for teachers resulting from CAS investigations, changes must be made to the reporting of allegations at the school and school board level as well as at the CAS level, as soon as possible. CAS agencies

investigating teacher conduct should be required to take into account the unique aspects of the school environment, including the duties and statutory obligations of teaching professionals. In cases where no harm is alleged and/or the alleged conduct, even if it did occur, could not have created any risk of harm, no report should be made to the CAS and no investigation should be conducted by the CAS. Such matters should be addressed at the school level, if at all.

In sum, the changes proposed in this paper would assist in lowering the number of unnecessary investigations into alleged teacher misconduct and thus, would benefit teachers, the education system and the child protection system.