

PROTECTING YOURSELF FROM ALLEGATIONS: WHAT TO DO WHEN THE DREADED CALL FROM THE POLICE

COMES¹

INTRODUCTION

Most people who become foster parents have never had any dealings with the police. They are upstanding citizens; individuals who are used to helping, not hurting, others. But dealing with children from difficult backgrounds can place a foster parent at risk. Allegations of inappropriate behaviour are easy to make and, once made, the police will almost certainly become involved. That involvement usually starts with a visit or phone call from a police officer. This can be a very traumatic experience for a foster parent and it may seem as if their entire world has been turned upside down.

An understanding of your basic legal rights can help you navigate through this difficult time without placing yourself in greater risk. Here are some things you need to know about dealing with a police investigation ...

YOU HAVE THE RIGHT TO REMAIN SILENT ... USE IT

You've probably heard the expression, "you have the right to remain silent", whether from U.S. T.V. shows or movies. That right exists in Canada too. What it means is that you don't have to answer any questions from police investigators if you don't want to.

¹ By Ian Carter, partner at Bayne Sellar Boxall

- The police can't arrest you for refusing to answer their questions.
- If you are approached by a police officer, it is best not to answer any questions until you have spoken to a lawyer.
- If you are asked to attend the police detachment, do not go until you have received advice from a lawyer who specializes in criminal law. A lawyer will be able to advise you as to whether you should attend or not and what to do if you are required to attend.
- Where possible, do not attend on a Friday night. If you are arrested it may take longer to process and release you. A lawyer can assist in arranging a convenient time for you to attend the detachment if this is required.

UFPC EMERGENCY LAWYER REFERRAL: 1-855-273-0944

The United Foster Parents of Canada provides both advice and financial support for foster parents who are being investigated for committing criminal offences. If you are approached by the police about an investigation into your conduct, you can call the Emergency Lawyer Referral line at 1-855-273-0944 and the UFPC will immediately put you in touch with a criminal lawyer in your area with experience in these kinds of cases.

YOU HAVE THE RIGHT TO CALL A LAWYER AFTER ARREST

In some cases, a police officer will simply show up at your home or workplace and arrest you. You will not always be notified in advance that there is a warrant for your arrest. The police are given considerable leeway in how they conduct their investigation. However, if you are arrested the police are required to read you "your rights", which is normally done from a standard issue card all officers are given. One of the "rights" that will be read to you is the right for you to call

a lawyer. After reading you this “right”, the officer will then ask you if you wish to call a lawyer. It is best to tell the officer that you do wish to speak to a lawyer. At this point, the officer is supposed to stop asking you any further questions until you have had a chance to speak to a lawyer. If, for some reason, the officer continues to ask questions even though you have said you wish to speak to a lawyer, you should not answer them.

After you have been arrested, you will normally be put into a police cruiser and taken to the local detachment. Once there you will be placed into a private room where you will be given the opportunity to call a lawyer. If you know the name of a lawyer you wish to call, let the police know and they will find the phone number for you. You can also call the Emergency Lawyer Referral Number if you have not already done so. If you do not know a lawyer and can't remember the Emergency Referral number, many local detachments have lists of local lawyers who practice criminal law. You can choose a lawyer from that list if you wish. Finally, the police will give you a number for “duty counsel”, a free service that you can use. You can obtain immediate legal advice through any of these options. You do not need to stick with the lawyer who gives you advice after you are arrested if you do not want to.

WHAT TO DO DURING THE POLICE INTERVIEW AFTER ARREST

Once you have spoken to a lawyer and received legal advice, the police can start asking you questions again. Any answers you give can be used against you because you have had the chance to speak with a lawyer. In most cases, the lawyer will advise you not to answer any police questions at this point. Remember, you have the right to remain silent. You have the legal right not to answer any of the police questions if that's what you choose to do. Often this is the best option until more is known about the investigation.

Unlike U.S. T.V. shows, however, your lawyer does not have the right to be present during the police interview (unless you are 17 years old or younger). You will be on your own, armed only with the legal advice your lawyer gave you. This is usually the most difficult and stressful period. Police officers are professionals trained to ask probing questions. They are even entitled to give you false information in an effort to get you to talk. It is during this time that it is critical you follow the advice of your lawyer. The lawyer will have considerable experience in criminal investigations and you should follow their advice, despite the temptation to do whatever the investigator tells you to do.

MOVING FORWARD AFTER ARREST

Individuals can be initially detained by the police for up to 24 hours. If you are formally charged with a criminal offence, the police can either release you from the police station on certain conditions and with a future court date or bring you before a justice to determine if you should remain in custody or be released while you wait to deal with your charges. In most cases, you will be released from the police station. You should arrange a meeting with a lawyer (it does not need to be the one you spoke with when arrested) to discuss the next steps to take in dealing with the charges. You can call the Emergency Lawyer Referral for assistance in finding a lawyer who has experience in dealing with foster parents' cases if you have not already done so. If you are not released from the police station, you should make arrangements with the lawyer you were dealing with to contact family members to help put together a "bail plan" to present in court.

In most cases, if you do not have a criminal record, you will be released on a recognizance.

CONCLUSION

When facing a police investigation into criminal allegations, it is helpful to remember three of your principal rights:

- You have a right to remain silent;
- You have a right to call a lawyer before the police ask you any questions; and
- You have a right to be released or brought before a justice within 24 hours after your arrest.

Knowing your basic rights and using the assistance of an experienced criminal lawyer can help you get through this very stressful and confusing time.

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