

CHILDREN IN CARE

PROTECTING CHILDREN FROM SECOND HAND SMOKE WHEN GOVERNMENTS ARE THE “PARENT.”

Children in government care deserve as much protection from second-hand smoke as do children at home..

Parents have the responsibility to enable children to grow up in a relatively harm-free environment. This is also true for governments when they have children in their care.

One way of protecting children from harm is ensuring that they are not exposed to second hand smoke. Medical research has increasingly shown the need for such measures. Exposure to second-hand smoke has been shown to cause or exacerbate numerous illnesses including asthma, allergies, bronchitis, inner-ear infections and SIDS.

Parents can take simple steps, such as maintaining a smoke-free home, to ensure their children avoid exposure to second-hand smoke.

Sometimes, where parents are unable or unwilling to provide a safe and secure environment for their children, the courts can appoint provincial governments as temporary guardians. Doing so gives the government all of the duties and responsibilities of a natural parent for the time the child is under government care.

When the government is in the position of parent, the responsibility of protecting children from second-hand smoke is transferred from the natural parents to the government.

The government meets its parental responsibilities through provincial child protection systems, using foster homes as the main tool to watch over children in care. The responsibility towards children in care remains with the government until the children either return to

their families or are adopted by a new family.

While natural and adoptive parents also have the responsibility to protect their children's well-being, this paper deals only with instances where the parental role and responsibility is fulfilled by government.

Although it is the minister who is officially declared the child's guardian, in practice the ministers usually delegate responsibility for children in care to a government department or to various children's aid societies or child welfare agencies. Actual care of the children is undertaken by foster parents approved by the government department or welfare agency.

CHILD WELFARE ACROSS CANADA

STRUCTURE OF PROVINCIAL CHILD WELFARE PROGRAMS

The basic requirements for the government as parent are set out in provincial child protection legislation. The legislation explains why children are put in government care, and what happens to children once they have been removed from the home. That legislation is implemented by children's aid societies or child welfare offices, some of which are government run and some of which are private organizations funded by government. These groups are in charge of finding potential foster families and assessing those families against the criteria set out in the legislation.

Once a foster parent has been approved, a child can be placed in their care. While most of the day-to-day child rearing decisions for children in care are made at the discretion of the foster parents, there are certain issues on which they must defer to government regulations. These specific childcare requirements such as room size or number of foster children in one home can be found either in regulations under the legislation, or in policies and guidelines passed by whatever agencies the provincial minister has designated.

While all provinces use a foster care program of some sort, the organization of child welfare systems differs between provinces. Most provincial acts allow the minister to delegate power to a director and then allow the director to further delegate that power to child welfare agencies. The systems used to implement child protection legislation range from complete government control using specially created departments to government review of independent child welfare or Children's Aid societies. What follows is a brief overview of each provincial system, with a more in depth look at Ontario's set up.

BRITISH COLUMBIA

In British Columbia the *Child, Family and Community Service Act* is the legislative authority for the ministry's Child Protection Services. Under the Act, the Minister designates the Director of Child Protection, who in turn delegates the provision of child protection services across the province to child protection social workers. Social workers also have the delegated authority of the Director to approve foster homes for children who come into the care of the ministry. Child protection services across the province are provided through 429 ministry offices in 11 regions. The child

protection staff are supported by the provincial office of the Child Protection Division

ALBERTA

Alberta's child protection program is administered by the province's 18 regional child and family services authorities, each of which is led by a community board. The board's policies and decisions are implemented by the authority's chief executive officer, who also manages the daily operations of the CFSA and ensures the regional system runs effectively. CFSA staff report to the authority through the chief executive officer and are Government of Alberta employees. Authorities also contract with community-based agencies for the provision of services. Each CFSA ensures that provincial policies and standards are followed in the region.

SASKATCHEWAN

Based on the rules set out in the *Child and Family Services Act*, the government of Saskatchewan oversees its foster care program through the regional social services offices located throughout the province. Social workers employed by each regional office are charged with approving foster parents according to provincial guidelines and

placing children in need of protection in appropriate homes.

MANITOBA

In Manitoba the Child and Family Services Division administers the *Child and Family Services Act* and provides direction and funding support for regional offices and child and family services agencies. The agencies then provide the actual services mandated under the Child and Family Services Act including approving foster homes and protecting the best interests of children in care.

ONTARIO

The functioning of Ontario's *Child and Family Services Act* shows one way in which legal guardianship and quasi-parental responsibility can be set up. When a child is in need of protection, the minister is granted guardianship under the *Child and Family Services Act*. Under the organization of the provincial system, the minister never actually has control of the child; instead power is delegated to one of the fifty-five government-approved Children's Aid Societies located across the province. These societies must apply the guidelines set out in provincial regulations. For specific issues not covered in the legislation or the

regulations, each society can set local guidelines regarding that specific childcare issue

The actual wording of the Act states that the government, in its role as parent, must protect the child's well-being and must act in the child's best interests. The act then defines the best interests of the child to include a regard for the child's physical needs. Although not defined in the act, a common interpretation of physical needs would include health needs, which would give the law two health related purposes – protecting the well-being, and acting in the child's best interests.

Using both the provincial requirements and local guidelines, the Children's Aid Society must complete an assessment of any potential foster family before allowing children to be placed in the home. In keeping with the need to protect the child's health, the regulations state that an assessment of the child must be done prior to placement in a foster home that includes assessing the medical needs of the child.

Under their prerogative to create local guidelines, the Kingston-area Children's Aid society has passed a local standard prohibiting foster parents from smoking in the presence of foster children. The

society also attempts to identify any children with medical conditions exacerbated by second hand smoke and place those children in non-smoking homes. There are 55 CAS in the province of Ontario, and although they are loosely joined within the association, in certain areas every CAS has the ability to pass its own policies. The Kingston area has passed a resolution stating that all foster homes should be smoke-free (although foster parents are allowed to smoke outside).

QUEBEC

Under the auspices of the *Youth Protection Act*, the province of Quebec administer child protection through government agencies located throughout the province. These agencies follow directions received from the Ministry of Security and Social Services. While the idea of foster care is less popular in Quebec, the government, through its regional agencies, uses foster care in combination with other options such as group homes to ensure that the interests of children are met.

NEW BRUNSWICK

Child Protection, a division of the department of Family and Community services, works with birth parents and foster parents to ensure that children in

need of protection have the best possible care. The government division implements the law as set out in the *Family Services Act* when assessing potential foster homes and placing children.

NOVA SCOTIA

There are twenty child welfare agencies located throughout the province of Nova Scotia: six are district offices of the Department, 14 are privately run societies/family and children's services agencies. These agencies work together with the Department of Community Services to provide care for children in need of protection., using the guidelines contained in the *Child and Family Services Act*.

PRINCE EDWARD ISLAND

Through the authority of the *Family and Child Services Act* and under the administration of the provincial Director of Child Welfare, services are offered by each of PEI's five Regional Health Authorities to all children in need of protection. The regional health authorities have responsibility for the child protection referrals and for the foster care program.

NEWFOUNDLAND & LABRADOR

Administered through the

department of human resources and employment, the foster care program uses social workers in district offices to recruit, train and monitor those involved in the foster care program. The government also uses those social workers to monitor children in foster homes to ensure that their needs are being met. Extra support is provided as needed by the Newfoundland and Labrador Foster Families Association.

THE BUCK STOPS HERE

Although all of Canada's provinces have laws dealing with child protection that claim to safeguard the well-being of children, children under government care across the country continue to be exposed to second-hand smoke. Within the various systems developed to implement child protection legislation, different levels of responsibility exist where smoke-free guidelines can be implemented. Although the ultimate responsibility lies on the minister in charge of protecting children, generally there are other levels within the provincial systems where guidelines can be passed without requiring direct ministerial approval. In provinces with local non-governmental agencies or children's aid societies, the societies are empowered to create guidelines preventing exposure to second-hand smoke. Where the local

agencies are government departments, they may have less latitude for creating guidelines but should still be able to implement procedures protecting children's health.

Because of the broad policy-making powers given to local child welfare agencies, they are the first place to turn when seeking protection for children in care. If the local agency is unwilling or unable to create guidelines that will protect children in care from exposure to second hand smoke, the issue may need to be raised at a regional level, possibly at the provincial departmental level, or even with the minister him or herself.

The efforts of local agencies to implement protective guidelines should be used as a best practice to urge other agencies within the province to offer equal levels of protection. Until there is province-wide protection from second-hand smoke for children in care in every province in Canada, there will be an inequity in health protection among the children who require it most. Once second-hand smoke guidelines have been implemented by all local agencies, regional and provincial bodies will be compelled to include the issue in their policies. Having all levels of administration recognize the need for protection from second-hand smoke

increases the likelihood that those protective measures will actually be used.

Having guidelines in place will not guarantee protection from second-hand smoke; there must also be commitment to enforcing those guidelines. Without proper enforcement a strongly worded guideline or policy may still allow instances where the province is not meeting its obligation if children in care are exposed to second-hand smoke. This means that the smoke-free condition of the home must be a pre-requisite for potential foster parents, and for those who smoke outdoors, child welfare workers must ensure that the home remains smoke-free throughout their time as foster parents.

COMMON LAW DUTIES

Outside of any obligation imposed by legislation, the government may also have a common law duty to protect any children in their care from second-hand smoke. Parents owe a duty of care to their own children, and anyone taking over the role of parent or taking over care of the children for any length of time assumes the same duty of care while the children are under their protection. Often applied to teachers or full-time caregivers, this

duty to protect also falls on governments in situations when children are under their care. This includes cases where children are in foster care as well as where children are in institutions, either for mental or physical reasons, or for reasons of detention under the federal *Young Offenders Act*. Under this act, children between the ages of 12 and 17 who have been convicted of crimes can be sentenced to open or secure custody. While in custody, the offenders are under the care of the provincial government who runs the care facilities. Some provinces (such as New Brunswick) use foster homes for open custody for young offenders while others have created group homes for that purpose.

Because young offenders are under government care while they are in custody, the government has a duty to protect them from exposure to second-hand smoke during that time. This duty exists whether or not the government has official guidelines protecting young offenders from second-hand smoke. The fact that young offenders are, by definition, below the age of majority and therefore prohibited by provincial law from purchasing tobacco products merely underscores the government's duty to

protect. Some provinces have passed legislation prohibiting smoking in provincial prisons for adults, but none have yet seen fit to pass similar legislation to protect young offenders.

CONCLUSION

While governments freely admit in legislation regarding smoke-free work and public places that protecting children from second-hand smoke is an important issue, they have not yet recognized that fact in child welfare legislation. The disparity between knowledge and law may lie in the limited number of foster parents. By refusing potential foster parents because they do not have a smoke-free home, the government could be denying a place for a child in need of protection from an abusive or neglectful family. Governments fear that adding anything to the foster parent requirements, even something with obvious health benefits such as the need for a smoke-free home, would further deplete the already limited supply of foster parents,

Someone in the government must be willing to take responsibility for protecting children in care from second-hand smoke.

making it even more difficult to protect the children in care.

In every situation where government has care over children there will be different issues, different reasons why nothing has been done to protect children from second-hand smoke. But whatever the reasons, the fact remains

that, when weighing all possible risks faced by children in need of care, governments have not yet found second-hand smoke to be dangerous enough to require action.

FURTHER INFORMATION

BRITISH COLUMBIA

Child, Family and Community Services Act R.S.B.C. 1996 c. C-46
www.mcf.gov.bc.ca

ALBERTA

Child Welfare Act R.S.A. 2000 c. C-12
[Www.child.gov.ab.ca](http://www.child.gov.ab.ca)

SASKATCHEWAN

Child and Family Services Act
www.gov.sk.ca/socserv/

MANITOBA

Child and Family Services Act S.M. 2001 c. C-80
www.gov.mb.ca/fs/programs/

ONTARIO

Child and Family Services Act

QUEBEC

Youth Protection Act

NEW BRUNSWICK

Family Services Act
<http://www.gnb.ca/0017/Index.htm>

NOVA SCOTIA

Child and Family Services Act
<http://www.gov.ns.ca/coms/files/fcs.asp>

PRINCE EDWARD ISLAND

Family and Child Services Act
<http://www.gov.pe.ca/hss/cfacs-info/index.php3>

NEWFOUNDLAND & LABRADOR

Child Youth and Family Services Act
<http://www.gov.nf.ca/health/commhlth/childwel/childfos.htm>