

Provincial Laws and Screening



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Provincial Laws and Screening

Disclaimer – this information is not legal advice, nor does it represent the views of the government of Canada or its representatives. This information is a brief summary of current federal legislation and common law relevant to screening in Canada. For complete and up-to-date information, readers should check with appropriate authorities. Readers seeking legal advice should consult with a lawyer

1. INTRODUCTION

Screening in Canada is subject to a complex set of criminal, civil, constitutional and administrative statutes, combined with a substantial body of common law. Taken together, these laws form a regulatory regime that applies to those organizations and individuals, both paid and volunteer, who work with children, youth and other vulnerable persons.

When Volunteer Canada's The Screening Handbook was first published in 1996, the concept and practice of volunteer screening was relatively new. Although there had been some high profile instances of children being harmed by those in whose care they were placed, these were not sufficient in number or magnitude to galvanize public opinion or forge a uniform response to the issue of screening. Debate at this time revolved around whether organizations had a duty to screen employees and volunteers, and in only a few cases did existing laws or policies explicitly require that screening be undertaken.

Today there is far greater consensus in the non-profit community that screening must be done. Debate today is not on whether we must screen (as it is widely accepted that we must) but on how it should be done, given the need to find a practical balance between the duty of organizations to provide a safe environment and the practical limits of what organizations can afford to do, or have time and resources to do.

2. PURPOSE OF THIS DOCUMENT

Today, it is well-established in common law, regardless of the province in which one is located, that organizations providing services to vulnerable persons have a duty to take reasonable steps to ensure their safety and well-being. This is the case in all sectors of the non-profit community – whether the organization's services are focused on education, health, social services, the arts, recreation, sport or faith. The organization that does not carry out some form of screening of volunteers is likely failing to meet the standard of care that the community, and Canadian law, now requires of them.

This document provides an update on provincial legislation as it pertains to screening. In most areas, Canadian provinces are similar in how their laws address the issue of screening to protect vulnerable persons from harm. For example, all provinces have statutes dealing with incorporation of businesses and societies, occupiers' liability, changing names, child protection and welfare, human rights and protection of privacy. These are areas of legislation that make either explicit or implicit references to screening.

However, the provinces also differ in other regards: for example, British Columbia is unique in having the Criminal Records Review Act, a statute that intersects many other laws and requires screening in a wide range of circumstances, while Ontario is unique in having Canada's first sex offender registry, created in 2001 under a statute called Christopher's Law.

Whether similar or distinct, legislation in the provinces must be considered in light of both federal laws and the common law. For a discussion of federal legislation relevant to screening, readers are referred to the Volunteer Canada publication, Federal Law and Social Policy. A discussion of the common law is presented in section 3.



The concluding section of this document highlights provincial laws, pointing out where the provinces are similar in their laws relating to screening, and also where they are different.

3. COMMON LAW

Common law is that body of law that has evolved over centuries of judicial decision-making. The common law is a set of legal standards or principles that have developed over time as judges decide different cases. The common law is not static but continues to slowly evolve, often in response to changes in societal attitudes and community standards. Sometimes, the principles of common law are “codified” into a statute, where a statute is a specific law passed by a legislative body to address a specific issue in the common law.

There are three areas of common law that are relevant to screening, all of which apply to activities within provincial jurisdiction. The most important of these is the law of negligence. Two other significant areas of law are defamation (which includes libel and slander) and administrative law (which is the body of legal principles that applies to autonomous, self-governing organizations).

Each of these areas of common law is briefly discussed here.

a) Negligence

The term negligence refers to the responsibility or duty to ensure the safety of those persons who may be affected by our actions. The “standard of care” that a person is expected to exercise is an objective standard reflected by what an average, reasonable person would do, or not do, in a given situation. This standard of care is invoked when a person has a duty of care towards another. Where this duty exists, conduct that fails to meet this objective standard of care may be negligent.

To understand the concept of negligence more fully, two components of it warrant further discussion. These are the terms “duty of care” and “standard of care”.

A person does not owe a duty of care to everyone around them, or to every person with whom they

interact. The circumstances that give rise to a duty of care stem from the existence of a certain relationship between persons, or between a person and an organization.

This relationship might be a very “general” one – for example, each of us owes a duty of care to those other persons that we can foresee might be affected by our actions, whether or not we have a close relationship with them. The relationship that gives rise to a duty of care might also be a “special” relationship of trust and authority, such as that which exists between parent and child, teacher and student, pastor and parishioner, doctor and patient, driver and passenger, coach and athlete, program leader and participant, professional and client. A duty of care also exists between a service organization and the client group that it serves.

The existence of a duty of care gives rise to a corresponding, objective standard of care. Standard of care refers to the level of care and attention that one person owes to another when they are in a general or special relationship such as described above. The behaviour required to meet the standard of care will vary with the circumstances, including the nature of the relationship between the parties, the nature of the activities being undertaken, the degree of supervision of the activity, the setting in which the activity occurs and the inherent risk in the activity.

For example, the standard of care in the provision of ordinary services to adults may be relatively low. As the activities undertaken by these adults become riskier or more complex this standard may increase. Conversely, the standard of care may be relatively high in situations that involve providing services to youth and other vulnerable persons, who unlike ordinary adults are not as capable of perceiving potential harm, protecting themselves from such harm and making sound decisions.

In the context of screening, the law has viewed vulnerable persons as “those persons who have difficulty protecting themselves from harm and are at risk due to age, disability, handicap or other circumstances”. Vulnerable persons can include children, youth, the elderly and people with physical, mental, developmental, emotional, social or other

disabilities. Vulnerable persons might also include people dealing with addiction, people experiencing short-term trauma or crisis, or people coping with loss or bereavement.

The standard of care may also be higher in situations where the relationship between two individuals is one of authority, power or trust. Typically, these relationships create a category of persons who are vulnerable. A relationship of trust is said to exist where:

- someone has a degree of authority and power over another, such as a teacher or coach would have;
- someone has unsupervised access to another person, such as a nurse or doctor;
- the activity specifically requires a close, personal and trusting relationship, such as a mentoring or matching program; or
- the nature of the service being provided renders the client vulnerable, as in a primary caregiver relationship where the caregiver may be bathing, clothing or feeding the client.

All of these relationships and situations create a higher standard of care for both the individual in the relationship and for the organization that employs them or for whom they volunteer. It is this standard of care, and in particular, the higher standard that exists in relationships of trust that imposes on organizations the obligation to take reasonable steps to screen employees and volunteers.

b) Defamation

Defamation refers to the act of harming another's good name or reputation by speaking or writing about a person in ways that demean them or expose them to contempt or ridicule. Where the harmful comment is in written form it is called libel and where it is verbal it is called slander. Like negligence, defamation is a matter largely addressed by common law and it has significance for screening.

Individuals within organizations who have responsibility for carrying out screening activities need to be aware of the law of defamation as it exists in common law as well as in various provincial

statutes. By its very nature, the activity of screening has the potential to give rise to defamation: in fact, the fear of legal action for defamation is one reason organizations are reluctant to disclose negative information obtained through a screening process, and are hesitant to communicate truthfully when an employee is released or when a reference is requested from a future employer.

The law of defamation is tricky and it involves treading the fine balance that exists between the protection of a person's reputation and the right to freedom of speech. Our law presumes every person has a good reputation and sets a very low threshold for a finding of defamation. However, there are defenses to defamation that recognize the right to make certain comments about other people under certain circumstances. Two defenses are relevant to screening: justification and qualified privilege.

The defense of justification occurs when the otherwise defamatory information about an individual can be proved to be true. A suspicion or a belief that the information reflects the truth is not sufficient – the substance of the information must be proved true and accurate. A person relying upon this defense when they are screening others must be confident that they have full, factual and well-documented information. The contents of a police records check would be factual and accurate, while hearsay comments attributed to a third party would not.

The defense of qualified privilege occurs when the person furnishing the information about an individual has a legal, social or moral duty or interest to do so, and the person to whom this information is furnished has a corresponding duty or interest in receiving it. There is no absolute test for what is privileged and what is not – it depends on the circumstances under which the information is provided. The important and fairly universal public policy objectives of protecting youth and vulnerable persons from harm through screening will often support a defense based upon qualified privilege.

c) Administrative law

Most screening activities in Canada are carried out by private, non-profit organizations. In addition to being subject to external federal and provincial

statutes and common law, these organizations are self-governing through their own internal policies and rules. As such, these organizations have the authority to establish policies, write rules, make decisions and take actions, including actions around screening, that affect their members, participants, clients and constituents.

Furthermore, a body of law called “administrative law” prescribes the rules by which private organizations must operate. There are two important aspects of administrative law that are relevant to screening:

Firstly, these organizations derive their authority from their constitution, bylaws, policies and rules, which taken together can be termed “governing documents”. These governing documents form a contract between the organization and its members, where this contract specifies respective rights and obligations. This contract is like any other contract and may be enforced legally. The activity of screening, particularly when members and volunteers are the focus of screening, must be properly incorporated into the private organization’s governing documents.

Secondly, these organizations have a legal obligation to interpret and implement their governing documents according to the rules of procedural fairness. These rules indicate that decisions must be properly authorized, persons affected by decisions have a right to be heard, and decision-makers must not be influenced by bias. This means that policies for screening must be soundly designed and properly written, and must be implemented in a manner that is knowable and fair to those persons who are subject to screening.

As well, most volunteers are “members” of the organizations for whom they volunteer, and volunteering opportunities are widely recognized as a benefit or privilege of membership. The development and implementation of screening policies and measures (which have the potential to deny a volunteer the opportunity or benefit of volunteering) must not only comply with statutes and common law, they must also properly reflect and respect the principles of procedural fairness described above.

4. PROVINCIAL LEGISLATION - GENERAL

The majority of Canadian provinces have legislation dealing with the following areas that are relevant to screening:

- Incorporation
- Occupiers’ liability
- Privacy protection
- Child protection
- Human rights
- Change of name
- Victims’ services
- Regulated professions

To avoid unnecessary repetition in this document, these eight areas, including the purpose of such legislation and its implications for screening, are discussed in general terms in this section. In sections five to 14 the document then turns to each province to elaborate on these general areas, as well as highlight any unique characteristics or distinctive features in that province’s legislative structure.

a) Legislation governing incorporation

Most Canadian provinces have a Companies Act and/or Business Corporations Act under which corporations (both for-profit and non-profit) are created. Some provinces also have a specific statute for the incorporation of non-profit organizations, such as the Societies Act in Alberta, or the Non-Profit Corporations Act in Saskatchewan. Other provinces such as Manitoba and Ontario rely on their respective Business Corporations Act to enable the creation of non-profit corporations.

There are two important aspects of incorporation that are relevant to screening. First, personal liability is limited for members and directors of an organization that is incorporated. For example, if an organization is found liable for negligence in regards to screening, hiring or supervision, or vicariously liable for the actions of its employees or volunteers, the individual members of the organization, including its directors and officers, will not be held personally liable.

Second, directors and officers of non-profit corporations assume significant duties in representing the interests of the corporation and its members (for more information on this topic, refer to the Volunteer Canada publication Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations). Under business or non-profit corporation statutes, every director and officer of a corporation has an obligation to act honestly and in good faith with a view to the best interests of the corporation; to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and to comply with the relevant Act and its regulations as well as the incorporating documents and bylaws of the corporation.

With respect to screening, it is these latter two duties that are significant. Directors of organizations who fail to ensure that the organization complies with statutory and common law obligations to appropriately screen employees and volunteers may be deemed to have failed in their fiduciary obligations to their members, and can be held responsible on behalf of the corporation.

b) Occupiers' liability legislation

Each province in Canada has a statute outlining the duties of an occupier of premises to take reasonable care to ensure the safety of those persons who use their premises.

An "occupier" includes a person who is in physical possession of premises, or a person who has responsibility for and control over the condition of premises, activities conducted on the premises, and the persons allowed to enter those premises. At any given time there can be more than one occupier of a given premises. "Premises" is defined as land, buildings and other structures erected on land. Occupiers can thus include owners and renters of land or buildings as well as occasional users of land or buildings, such as public facilities or public parks.

An occupier has an affirmative duty of care that applies to the condition of premises, the activities being carried out there, and the actions of persons on the premises (regardless of whether those per-

sons are employees, volunteers, participants or third parties). However, an occupier may be relieved from its duty if the person or visitor willingly accepts the risks of entering the premises. Of course, a vulnerable person or someone who has diminished mental capacity may be incapable of assuming those risks.

The laws of occupiers' liability have very broad implications for screening. If an organization is deemed an occupier, it may be liable for any negligence that occurs on its premises. In addition, the organization may be found vicariously liable for the actions its employees or volunteers, even when the organization itself was not negligent. This reaffirms the need to manage risks, properly screen volunteers, and to adequately train and supervise personnel, both paid and volunteer.

c) Privacy legislation

All provinces in Canada have statutes regulating the management and disclosure of personal information held by provincial government departments, agencies and institutions. These statutes seek to balance the legitimate need of public institutions to gather information about individuals, and the right of individuals to keep such information private and confidential. This balance is achieved through a complex set of rules regarding the collection, retention, use, disclosure and disposal of personal information held by provincial institutions.

The legislation is relevant to screening because it imposes strict controls over the disclosure of personal information, such as the information that would be obtained in the screening process. However, personal records may be disclosed if the individual who is the subject of the records requests such disclosure or consents to it, and individuals may also obtain access to their own personal records for their own use.

Nearly all screening measures in Canada are based on the principle of "voluntary consent", wherein the person being screened for an employment or voluntary position is asked to grant their consent to the release of personal information. In this way, the strict controls in privacy legislation may be bypassed.

d) Change of name legislation

All Canadian provinces have legislation governing how people may change their names. Usually, this is done for reasons of marriage, divorce or adoption. In many provinces, this legislation incorporates checks and balances to ensure that names are changed for legitimate purposes, as opposed to being changed as a way to avoid detection by authorities. In other words, any name change application must include details of criminal offenses and law enforcement orders, as well as a police records check. However, some provinces do not have these restrictions.

This legislation is relevant to screening in an indirect way, as it is becoming increasingly difficult for individuals to change their names in order to disguise records of abuse or other criminal activity. However, the information contained in a name change application, and provincial records that are kept of changed names, is generally not available to private organizations that carry out screening. As well, once a name change has been approved, the individual has no obligation to disclose this or to make any reference to their former name as part of a screening process.

e) Child protection legislation

All provinces have legislation designed to protect children from harm and to ensure that, where and when possible, support and assistance are provided so that a child may remain with his/her family. Under these statutes, organizations are licensed to provide a range of services to families and children, including those children who are victims of neglect or abuse, or are otherwise in need of protection. Typically, organizations licensed or funded under this legislation must, as a matter of policy, have comprehensive screening policies to conduct screening of employees and volunteers.

In most provinces, this legislation authorizes the creation of a child abuse registry to keep track of known child abusers. This registry is used to make informed decisions about child protection matters and the placement of children in foster care. Generally, this registry may be accessed only by public agencies and law enforcement officials, and thus, with a few exceptions, is not available to

assist private organizations in their screening efforts.

From the perspective of screening, the definition of a child in need of protection and the duty of professionals working with children, as well as members of the general public to report such a need, are significant. Agencies working with children have significant responsibilities under these statutes. And while not all provinces impose an affirmative duty to screen through their child protection laws, there is everywhere an implied duty to carry out effective screening in order to protect children, and screening is routinely conducted as a matter of policy.

Child protection legislation is of critical importance to screening. For this reason, in the sections that follow describing specific provincial legislation, this area of law is discussed in detail even though the general overview presented here also applies.

f) Human rights legislation

Human rights laws are fairly consistent across all provinces. These laws assert the right of all individuals to equal treatment with respect to goods, services, facilities, accommodations and employment. Discrimination is prohibited on a number of grounds such as race, ancestry, sex, marital status, family status, sexual orientation, religion, disability and, for employment purposes, record of criminal offenses. (It is noted that there are slight variations from province to province).

Human rights laws apply to provincial and municipal governments, public and quasi-public agencies (such as educational institutions) and private organizations and businesses that provide goods, services, facilities or accommodations to the general public. (Again, there are slight variations from province to province).

Human rights laws are relevant to screening because their anti-discrimination provisions will impact the authority and discretion of organizations to recruit, hire and dismiss both employees and volunteers. In other words, organizations cannot discriminate in providing and filling employment or volunteer opportunities. However, the

prohibition on discrimination is not absolute: in the employment area, if the employer can demonstrate a bona fide occupational requirement, then that employer can discriminate on those grounds related to that requirement.

For example, it is not unlawful to discriminate on the basis of age, sex, race, ancestry, religion or other ground, depending on the nature of the organization, the nature of the volunteer position and the degree of responsibility in the position. As well, while in many provinces employers cannot normally discriminate on the basis of criminal record, they can do so if they can show a legitimate, policy-oriented and reasonable rationale why a prospective employee should not have a record, or should not have a record for certain types of criminal offenses.

Human rights laws tend not to reference volunteers specifically, nor do they define employees or employment situations. As a result, it is not entirely clear whether volunteers are included in this prohibition on the basis of criminal record. However, organizations carrying out screening of volunteers are prudent to presume that volunteers would be covered by this legislation, and to implement screening measures in a manner that does not discriminate on prohibited grounds.

g) Victims' services legislation

There is a recent trend in some provinces to expand legislation defining the rights and services to which victims of crime may be entitled, ranging from compensation, to information disclosure to counseling services. Although these laws do not impose an explicit duty to screen, it is consistent policy in all provinces having such laws to require

screening of all government staff, professionals and volunteers who come into contact with, and provide services to, victims of crime.

h) Regulated professions

The regulation of professions is a provincial responsibility. In most provinces, legislation exists to provide a basic framework within which self-governing professions operate. Those regulated professionals that come into contact with vulnerable persons include the many health professionals (doctors, nurses, dentists, psychologists, physiotherapists, pharmacists, etc.) as well as teachers, social workers and lawyers.

To be employed in a regulated profession, an individual must be a member of the profession's relevant governing body or college and as such, is subject to codes of conduct, standards of practice, and requirements for training and professional development. Member professionals may be subject to disciplinary procedures for failing to comply with standards. Most professions maintain a public register of members in good standing, and disclose the outcomes of disciplinary proceedings against their members. As well, employers of regulated professionals have a duty to report to the relevant college any dismissal of a professional for incompetence, professional misconduct or a criminal conviction.

Although, with a few exceptions, the regulation of professionals through legislation makes no explicit reference to screening, any organization that is considering hiring or retaining under contract the services of a professional should, as a minimum screening step, ensure the individual is a member in good standing of his or her professional college.

Note on Citations: In sections five to 14, the legal source, known as the legal citation, has been provided for all provincial statutes and regulations. This is a quick note on how to interpret and understand these citations. The general form for a statute is title of the statute, followed by the statute volume (usually “Revised Statutes” or “Statutes” depending on whether it is a revised or sessional statute), jurisdiction, the year and the chapter. For example, Alberta’s Business Corporations Act would be cited as follows: R.S.A. 2000, c. B-9, which reads as the Revised Statutes of Alberta in the year 2000 at chapter B-9). There are exceptions however, for example the statutes of Manitoba are consolidated into the “Continuing Consolidation of the Statutes of Manitoba” followed immediately by the chapter number with no indication of the year. The general form for regulations is title of the regulation, followed by the regulation number and the last two digits of the year. Although, these citations may seem confusing, they provide valuable information to those readers who wish to conduct further research.

5. ALBERTA

Business Corporations Act

R.S.A. 2000, c. B-9

Companies Act

R.S.A. 2000, c. C-21

Societies Act

R.S.A. 2000, c. S-14

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Change of Name Act

R.S.A. 2000, c. C-7

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. With the exception of a name change being published in the Alberta Gazette, there are no other controls or restrictions on name changes.

Child Welfare Act

R.S.A. 2000, c. C-12

Note: The Government of Alberta is currently reviewing the Child Welfare Act. The goal is to achieve a balance between promoting and ensuring the safety and well being of children, and respecting the fundamental responsibility of parents for their children. The review and implementation will take place in five phases. The draft legislation will be ready for presentation to the Legislature and for implementation between February 2003 and March 2004.

Purpose of the Legislation

The Child Welfare Act is the legal authority for child protection services in Alberta. The Act is based on the belief that a family is responsible for the care and supervision of its children. With the support of the community, most parents are able to protect their children. Child protection services are only needed when a parent cannot adequately protect a child.

A child is in need of protective services when the security or development of the child is endangered because the child has been abandoned or lost, or because the guardian of the child is unable or unwilling to provide adequate care, which includes protection from physical injury, sexual abuse, emotional injury, and cruel and unusual punishment.

A “guardian” is defined in part as a person who is appointed guardian of the child under the Domestic Relations Act, or a person who is a guardian of the child under an agreement or order made pursuant to the Child Welfare Act. The Act also provides that any adult who has had continuous care of a child for a period of more than six months may apply to the Court for a guardianship order in respect of the child.

Implications for Screening

Under this legislation, the protection of children extends only as far as those persons who fall within the definition of a guardian. This does not include organizations offering programs or services, such as care centres or day care programs, because they do not fall within the definition of guardian.



However, the Act does provide that any person who has reasonable and probable grounds to believe, and does believe that a child is in need of protective services has an obligation to report the matter. This would include anyone who has contact with the child, including family, teachers, social workers, day care employees, nurses and doctors. However, the Act does not require organizations working with children to screen their employees or volunteers.

Freedom of Information and Protection of Privacy Act

R.S.A. 2000, c. F-25

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Health Professions Act

R.S.A. 2000, c. H-7

Purpose of the Legislation

This statute establishes a number of self-governing colleges for the regulation of health professions, including doctors, nurses, dentists, chiropractors, naturopaths, optometrists, physical therapists, pharmacists, dieticians, social workers and psychologists.

A college is required to govern its regulated members in a manner that protects and serves the public interest; establishes, maintains and enforces standards for registration and of continuing competence; and establishes, maintains and enforces a code of ethics for the particular health profession. Refer to Section 4(h) for a discussion of this legislation and its implications for screening.

Human Rights, Citizenship and Multiculturalism Act

R.S.A. 2000, c. H-14

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. It is interesting to note that neither sexual orientation nor criminal records are prohibited grounds of discrimination in Alberta, unlike in most other provinces.

Occupiers' Liability Act

R.S.A. 2000, c. O-4

Refer to Section 4(b) for a discussion of this legislation and its implications for screening.

Protection for Persons in Care Act

R.S.A. 2000, c. P-29

Purpose of the Legislation

This legislation requires agencies to maintain a reasonable level of safety for the adults in their care and to protect them from abuse. In light of this goal, agencies are required to screen their employees and volunteers.

Agencies include hospitals, lodges or nursing homes, social care facilities, hostels, emergency shelters, residential treatment centres, group homes, and vocational rehabilitation and training centres (these agencies are operated by the Government of Alberta or receive part or all of their operating funds from the Government of Alberta).

The Act places a duty on all individuals or service providers to report abuse when they have reasonable and probable grounds to believe that there is or has been abuse against a client. A service provider is a person who is employed by or provides services on behalf of an agency (which would appear to include volunteers), and a client refers to an adult who receives services from an agency.

Any person who knowingly fails to report abuse is guilty of an offence, and if the person is a member of a regulated profession (for example, nurses, doctors, chiropractors, dentists, social workers or others), the appropriate governing body of that profession or occupation shall be advised of the person's failure to comply.

Once a report of abuse has been received there must be an investigation. Upon completion of the investigation a final report must be delivered to the appropriate Minister. In that report the Investigator may recommend that the funding an agency receives from the government or any government

agency be reviewed and altered, that the agency take disciplinary action against an employee or service provider, or that the complaint be dismissed.

Implications for Screening

Every agency has a duty to provide a safe environment for its clients and as such, each agency must require that every successful applicant for employment and every new volunteer provide a criminal records check. If screening is not carried out and a report of abuse is received, the agency is at risk to lose all or part of its funding.

6. BRITISH COLUMBIA

Adult Guardianship Act

R.S.B.C. 1996, c. 6 [sections 4-43 and 65 not yet in force]

Purpose of the Legislation

This Act looks to enhance the independence and self-determination of adults when they become vulnerable in the most effective, and least restrictive and intrusive manner. The guiding principles of the legislation state that adults are entitled to live in the manner they choose and to accept or refuse support, assistance or protection as long as they do not harm others and are still capable of making their own decisions.

Support and assistance is provided to abused and neglected adults (where an adult is defined as a person who has reached 19 years of age) who are unable to seek support and assistance because of physical restraint; a physical handicap that limits their ability to seek help; or an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

In this statute, "abuse" is defined as the deliberate mistreatment of an adult that causes physical, mental or emotional harm, or damage to or loss of assets, and includes intimidation, humiliation, physical assault, sexual assault, over-medication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors. "Neglect" is defined as any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is likely to cause, the adult serious physical, mental or emotional harm or substantial damage to or loss of assets, and includes self-neglect.

The support and assistance outlined in the Act applies whether the adult is abused or neglected in a public place, in the adult's home, a relative's home, a care facility or any other place except a correctional centre.

Anyone who has information indicating that an adult is abused or neglected may report the circumstances to a designated agency (defined as a

public body, organization or person). In each community there is a designated organization that will respond to complaints of abuse.

Implications for Screening

The legislation does not require the screening of employees or volunteers, nor does it require mandatory reporting of abuse of adults. However, if a designated agency has reason to believe that a criminal offence has been committed against an adult, the agency must report the facts to the police. Ultimately, there remains a duty on individuals and organizations (employees and volunteers) to recognize abuse, in its many forms, and to protect adults who can no longer protect themselves.

Child, Family and Community Service Act R.S.B.C. 1996, c. 46

Purpose of the Legislation

The Child, Family and Community Service Act is the legislative authority for the Ministry's Child Protection Services. The goal of the legislation is to protect children from abuse, neglect and harm or threat of harm and to ensure that, if possible, and with the aid of support services, a child remains with his or her family. A child is defined as a person under 19 years of age.

The Act provides specific legal definitions for terms including child in need of protection, sexual abuse, sexual exploitation, emotional abuse, and physical abuse.

A child is in need of protection when the child has been, or is likely to be, physically harmed, sexually abused or exploited by the child's parent, or by another person and the child's parent is unwilling or unable to protect the child. Also included in the definition is physical harm because of neglect, emotional harm, deprivation of necessary health care, and abandonment. It should be noted that a child is in need of protection only in relation to its parents and not any other person, such as employees or volunteers from various day care or social service agencies.

However, under the Act there is a duty on every person who has reason to believe that a child may

be abused, neglected, or is for any other reason in need of protection, to report the abuse to an official designated under the Act. This is an explicit duty and extends to everyone who may come in contact with the child, whether a day care worker, bus driver, teacher, coach, or social worker. The report of suspected abuse is investigated by social workers, who will take the most appropriate action that is least disruptive for the child.

Implications for Screening

The statute does not explicitly require the screening of staff or volunteers in positions of trust. Nevertheless, given the purpose of the Act – the protection of children from harm or the threat of harm – the implicit duty to screen seems clear. Reference should be made to the Social Workers' Act and the Criminal Records Review Act, which provide separate procedures for screening and would impact persons under the jurisdiction of the Child, Family and Community Service Act.

Community Care Facility Act

R.S.B.C. 1996, c. 60

Note: Bill 73: The Community Care and Assisted Living Act received Royal Assent on November 26, 2002 and is expected to come into force in the spring of 2003, replacing the current Community Care Facility Act. The new legislation consists of two sections: one dealing with community care and child care facilities, and the other dealing with assisted living residences. It is not clear how Bill 73 will alter the content below.

Purpose of the Legislation

The statute defines under what circumstances a care facility may be operated and licensed (for example, a day care centre, a residence for seniors, a group home).

A "community care facility" is any facility that provides care, supervision, social or educational training or physical or mental rehabilitative therapy, with or without charge. It includes both adult care and residential child care but does not include a school under the School Act, any portion of a facility under the Hospital Act, a home approved as a foster home under the Family, Child and

Community Service Act, a home designated as a youth custody centre under the Correction Act, an approved home under the Mental Health Act, or a home providing day care for a sibling group only.

Implications for Screening

The statute provides that regulations may be made prescribing the training, experience and other qualifications required for operators and directors of different classes of community care facilities. The Adult Care Regulations and Child Care Licensing Regulation (below) specify requirements designed to meet the needs of the adults and children being served. Only the Child Care Licensing Regulation requires that police records checks be used as a method of screening applicants.

Adult Care Regulations B.C. Reg. 536/80

The Adult Care Regulations do not require police or other reference checks for employees or volunteers working in community care facilities. However, the Regulations ensure that licensees check the suitability of their employees to care for vulnerable adults. The Regulations require that a licensee of a care facility ensure that each of its employees has a personality and temperament that respects the dignity and maintains the individuality of residents, and is competent to carry out assigned duties.

Child Care Licensing Regulation B.C. Reg. 319/89

An operator of a licensed child care facility must not employ any person in the facility unless that person has provided a criminal records check under the Criminal Records Review Act, as well as character references to attest to the applicant's good character and suitability for employment in the facility. The Regulation clearly states that "employ" includes the services of the voluntary worker providing voluntary services.

As well, an operator must not permit any person over the age of 12, other than a child or a parent of a child enrolled at the facility, to be present on the child care premises, unless that person is of good character and has completed a criminal records check under the Criminal Records Review Act. Under the Regulations there is no distinction

between paid and unpaid workers - every person must be screened.

Criminal Records Review Act

R.S.B.C. 1996, c. 86

Purpose of the Legislation

The purpose of this Act is to help prevent the physical and sexual abuse of children by requiring all paid staff working with children, in particular those with unsupervised access to children, to undergo criminal records checks. It establishes a mandatory, uniform and consistent system for conducting these checks.

This Act is concerned with employees who work with children. An employee is an individual who works for an employer and includes an independent contractor, but does not include a volunteer. A child is defined as an individual under the age of 19 and this legislation applies to those working with children directly and having, or potentially having, unsupervised access to children in the ordinary course of employment or in the practice of an occupation.

The legislation applies to all current and new employees and contractors in organizations that are licensed by, registered with or receive operating funds from the province. This Act affects teachers, doctors, dentists, chiropractors, child care workers, nurses, school and hospital staff, including secretaries and cleaners, as well as people who work in the recreation and sport sector such as coaches, program leaders, facility operators, and playground supervisors.

Under the Act, employers have a duty to ensure that every individual who is hired for employment involving work with children, and every employee who works with children, undergoes a criminal records check. An employer must not require an applicant to authorize a criminal records check unless the employer has offered employment to the applicant. Existing employees who work with children must provide a criminal records check, and if it is not provided, the employee must not work with children until such time as the criminal records check is provided.

If an employee who works with children is charged with or convicted of a relevant offence subsequent to a criminal records check, the employee must promptly report the charge or conviction to his or her employer and provide to the employer a criminal records check authorization for a further criminal records check.

In addition, the Act applies to governing bodies that regulate professions such as chiropractors, dentists, health professionals, medical practitioners, naturopaths, emergency medical assistants, nurses, optometrists, podiatrists, psychologists, social workers, and teachers. Such governing bodies must ensure that every member of the governing body is registered and all who apply for registration undergo a criminal records check. The governing body must not register an applicant unless the applicant has provided a criminal records check authorization. Existing registered members must provide a criminal records check authorization and if they do not, the member must not work with children until such time as a criminal records check authorization is provided.

The legislation also applies to family child care providers who operate without a license but who are registered under a prescribed program (defined as a facility, other than a facility under the Community Care Facility Act, that offers child care to one or two children not related by blood or marriage to the operator of the facility). All individuals who request registration as a child care provider must undergo a criminal records check or they cannot be registered. Existing child care providers must also provide a criminal records check authorization and if they do not, they must cease working with children and their registration may be revoked.

A Registrar processes the request for a police records check and reviews the report. Records that have an outstanding charge relating to a relevant offence must be referred to a Deputy Registrar to determine whether the conviction or outstanding charge indicates that the individual would pose a threat of physical or sexual abuse to children. If an individual is identified as posing a risk, the employer must not hire the person to work with children.

Individuals may request a reconsideration of a Deputy Registrar's decision.

Relevant offences under the Criminal Code include, but are not limited to: sexual interference, sexual exploitation, incest, bestiality, child pornography, indecent acts, exposure, abandoning a child, criminal negligence causing bodily harm or death, manslaughter, murder, attempt to commit murder, administering noxious things, uttering threats, assault, sexual assault, kidnapping/ forcible confinement. In total, over fifty different offences will be considered as being relevant. As well, outstanding charges or convictions for trafficking in controlled drugs and restricted drugs are identified as a relevant offence.

Implications for Screening

This is sweeping legislation that cuts across all ministries and government sectors. It imposes an explicit duty to screen on all employers whose staff interacts with children. Employers are unable to hire individuals to work with children who refuse to comply with the criminal records check authorization. Likewise, current employees who refuse to undergo the check will be prohibited from working with children. What is unclear is whether current employees will necessarily be fired if a relevant offence is found on their criminal record.

Currently, the legislation applies only to employees and contractors working with children. It does not extend to volunteers working with children, or employees and volunteers working with other vulnerable groups. There has been discussion about broadening the Act to volunteers, but it is acknowledged that this could only be done at enormous cost to the government, as the government assumes all costs associated with these police checks.

Freedom of Information, Protection of Privacy Act

R.S.B.C. 1996, c. 165

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Health Professions Act

R.S.B.C. 1996, c. 183

Refer to Section 4(h) for a discussion of this legislation and its implications for screening. All individuals applying for registration in a health profession in B.C. must authorize a criminal records check under the Criminal Records Review Act.

Human Rights Code

R.S.B.C. 1996, c. 210

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. Included in this Code's list of prohibited grounds is discrimination on the basis of a conviction for a criminal or summary conviction offence that is unrelated to the employment of the individual.

Name Act

R.S.B.C. 1996, c. 328

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. In B.C., changing a name is relatively simple, but the process includes a criminal records check to deal with individuals changing their names to avoid detection by authorities.

Occupiers' Liability Act

R.S.B.C. 1996, c. 337

Refer to Section 4(b) for a discussion of this legislation and its implications for screening.

Social Workers' Act

R.S.B.C. 1996, c. 432

This statute regulates the profession of social work and sets out the requirements for registration of social work professionals. All social workers, regardless of which Act they are legislated to work under, must undergo a criminal records check before they work with children, as mandated by their own professional body.

Society Act

R.S.B.C. 1996, c. 433

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

7. MANITOBA

Change of Name Act

C.C.S.M c. C50

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. With the exception of a name change being published in the Manitoba Gazette, there are no other controls or restrictions on name changes in this province.

Child and Family Services Act

C.C.S.M c. C80

Note: On June 10, 2002, proposed legislation to restructure the Child and Family Services System received First Reading in The Legislative Assembly. The legislative changes were put forward by the Aboriginal Justice Inquiry – Child Welfare Initiative. The most significant change in the legislation will be the establishment of four Child and Family Services Authorities, where each authority will oversee the provision of child and family and adoption services to their respective constituents. It is not clear when this legislation will come into effect.

Purpose of the Legislation

Manitoba's legislation provides for services to protect children and help parents care for their children. The fundamental principles of the legislation state that the best interests of the child are of paramount importance, and that parents have the primary responsibility to ensure the well-being of their children.

A child is defined under the Act as a person under the age of majority, and is in need of protection when the life, health or emotional well-being of the child is endangered by the act or omission of a person. This can include situations where the child is without adequate care, supervision or control; is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child, or whose conduct endangers the life, health or emotional well-being of the child; is abused or is in danger of being abused; and is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child.



Abuse of a child means an act or omission by any person that results in physical injury to the child, emotional disability of a permanent nature in the child, or sexual exploitation of the child. This applies to parents, guardians and also to others who have care, custody, control or charge of a child, such as employees or volunteers involved in offering programs, activities, and services.

The Act requires any person who reasonably believes that a child is in need of protection to report such information to an agency, parent or guardian of the child. Where someone suspects that the child's parent or guardian is the cause of the child being in need of protection, that individual is required to report the information to an agency.

Regarding regulated professions, if the Director of Child and Family Services (who administers and enforces the Act) has reasonable grounds to believe that a member of a regulated profession has caused a child to be in need of protection or has failed to report suspected child abuse, the Director may report the member to his or her professional college for investigation and disciplinary proceedings.

Where a peace officer charges a person with an offence under the Criminal Code or under this Act, and the offence is based on alleged acts or omissions by the accused person in relation to a child, and the employment of the accused person involves the care, custody or control of children, or permits unsupervised access to children, the peace officer shall immediately advise the employer, manager or supervisor at the place of employment that the accused has been charged.

Child Abuse Registry

The Act requires the director to establish and maintain a child abuse registry and establish a child abuse committee to review cases of suspected child abuse. Where a child abuse committee suspects a person of having abused a child, the committee shall give to the person who is suspected an opportunity to provide information to it, and shall form an opinion whether the person abused the child and whether the name of the person should be entered in the registry.

Names are entered under three circumstances: following a conviction for abuse, as a result of a finding in a court that a child is in need of protection on the basis of abuse, or on the recommendation of the Child Abuse Committee. Names added to the Registry stay there for ten years or until the abused child turns 18, whichever is later.

An agency, upon application, shall be given access to the registry where the director is satisfied that the access is reasonably required to assist the agency in investigating whether a child is in need of protection, or in screening any person who provides work for or services to the agency, whether that person is an employee, foster parent, homemaker, parent aide, volunteer, student trainee or any person who applies to provide work for or services to the agency.

As well, if requested by an employer or other person (applicant), the director shall disclose to the applicant whether the name of a person is entered in the registry. However, the director must be satisfied that the information is reasonably required to assist the applicant in screening the person whose work, whether paid or unpaid, involves the care, custody, control or charge of a child, or permits access to a child.

Implications for Screening

Under the Act, the definition of abuse includes an act or omission on the part of any person and this could reasonably include all employees and volunteer workers of an organization. Although the Child and Family Services Act does not require the screening of employees and volunteers under the Act, it provides access to the Child Abuse Registry by any organization where individuals, employees or volunteers are involved with children. This enables organizations to obtain access to records for the purposes of screening any person who may have access to children through the provision of work or the offering of services.

Community Child Day Care Standards Act

C.C.S.M. c. C158

Purpose of the Legislation

This statute licenses and monitors the standards for child care centres and family day care homes. The Act states that every person providing day care shall at all times provide an environment that is conducive to the health, safety, and well-being of the children. The Act does not cover irregular babysitting arrangements, public schools, hospitals, or religious congregations during religious services.

The Act states that where a director has reasonable grounds to believe that any person associated with the operation of the proposed facility is not suitable to provide day care; the director may refuse to issue a license to the applicant or organization. As well, where the director is satisfied that a licensee has contravened or failed to comply with any provisions of the Act or the regulations (with respect to screening, see below), the director may suspend or revoke the license in respect of that facility.

Implications for Screening

Under the Act, regulations may be made regarding the qualifications, duties and responsibilities of licensees and of the staff of facilities operated by licensees.

Child Day Care Regulation 62/86

With respect to staff qualifications, this regulation specifies that every applicant for employment in a day care centre, or any person volunteering in a nursery school, must provide the director with access to information about the person's criminal record and access to the child abuse registry under the Child and Family Services Act. The applicant must consent to the disclosure of such information to the organization as well.

An organization shall not leave a person (applicant or volunteer) alone with children until receiving confirmation that the information about the person from their criminal record and child abuse registry is satisfactory. These requirements under the regulation apply to full time and school age day care centres, nursery schools, and occasional day care centres.

With respect to family day care homes and group day care homes, an application for a licence to

provide day care shall include: written authorization from the applicant granting the director access to information: information about the applicant's criminal record; information about the applicant and any of his or her children residing in the applicant's home, obtained from the child abuse registry; and written authorization from any adult person in the applicant's home granting the director access to information about the person's criminal record and information obtained from the child abuse registry.

The Community Child Day Care Standards Act requires a police records check for any person who applies to work or volunteer in a child care centre. If the child care centre is within a family home, all individuals within that home must be screened including the applicant, his or her children, and any other adult person in the home. In addition, the director may suspend or revoke the license in respect of a child care facility if the organization does not comply with the screening requirements.

Corporations Act

C.C.S.M. c. C225

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Freedom of Information Act

C.C.S.M. c. F175

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Human Rights Code

C.C.S.M. c. H175

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. In Manitoba, there is no prohibition of discrimination on the basis of a criminal conviction.

Occupiers' Liability Act

C.C.S.M. c. 08

Refer to Section 4(b) for a discussion of this legislation and its implications for screening.



Vulnerable Persons Living with a Disability Act

C.C.S.M. c. V90

Purpose of the Legislation

The purpose of this statute is to enhance and encourage a vulnerable person's independence and self-determination. This legislation strives to support adults living with a mental disability to safely live and participate in the community. The Act recognizes the right of a person living with a mental disability to be considered competent to make his or her own decisions unless it is demonstrated otherwise. Support services may be provided for vulnerable persons including residential services, counseling, day services, vocational training and life-skills programs.

A "vulnerable person" under the Act includes an adult living with a mental disability, who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property.

"Service provider" means a person who provides care, support services or related assistance for a vulnerable person in the course of professional, official or employment duties; as a student in a training placement; as a volunteer; or as an owner, operator or manager of a facility or business which provides such care, support services or related assistance, for a vulnerable person in the course of employment duties. There is no distinction between paid and unpaid workers in terms of a service provider.

Implications for Screening

The legislation provides for the protection of a vulnerable person from abuse or neglect. A service provider, substitute decision-maker or committee who believes on reasonable grounds that the vulnerable person is or is likely to be abused or neglected shall immediately report such information to the executive director who shall commence an investigation.

Abuse means mistreatment, whether physical, sexual, mental, emotional, financial, that is reasonably likely to cause death or serious physical or psycho-

logical harm to a vulnerable person, or significant loss to his or her property. Neglect means an act or omission that is reasonably likely to cause death or serious physical or psychological harm to a vulnerable person, or significant loss to his or her property.

Although the Act does not impose any explicit duty on service providers to screen their employees or volunteers; all employees, volunteers, and students have a duty to report abuse or neglect if they have a reasonable grounds to believe such abuse exists.

8. NEW BRUNSWICK

Business Corporations Act

S.N.B. 1981, c. B-9.1

Companies Act

S.N.B. c. C-13

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Change of Name Act

S.N.B. 1987, c. C-2.001

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. An application to change a name in New Brunswick requires disclosure of any criminal conviction and of any current legal actions in the New Brunswick courts.

Family Services Act

S.N.B. 1980, c. F-2.2

Purpose of the Legislation

The legislation, which is administered by the Department of Family and Community Services, addresses the breadth of social services in relation to families, in addition to the areas of child and adult protection.

With respect to child protection, any person who has information causing him or her to suspect that a child has been abandoned, deserted, physically or emotionally neglected, physically or sexually ill-treated or otherwise abused must inform the Minister of the situation without delay.

The security or development of a child may be in danger when, among other things, the child is without adequate care, supervision or control; the child is living in unfit or improper circumstances; the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child; the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child; the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment; and the child is in the care of a

person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child.

With respect to adult protection, where the Minister has reason to believe that a person is a neglected adult or an abused adult, the Minister shall begin an investigation. There is no mandatory duty to report abuse or neglect with respect to adults, as there is with children. However, the list used above for children whose security and development may be in danger is the same list used for adults whose security and development may be in danger.

Under the legislation, the Minister may enter into contracts for the provision of social services to any person, any family, any group of persons, any group of families or any community, and determine the need for community placement resources. Community placement resources can include a social service facility providing services to children or adults, and includes a foster home, a group home, a special care home, a sheltered workshop, a home in which family day care services are provided, and a day care centre. In effect, the legislation applies to all of these facilities but in addition, the Minister may designate any facility as a community placement resource for the purpose of this Act.

The Minister, for the purpose of providing social services, may enter into contracts with agencies that place both paid and unpaid staff in positions of trust with children and other vulnerable individuals. The parameters of the Act are broad and encompass any organization that contracts with the Department of Family and Community Services to provide social services to children and vulnerable adults.

Implications for Screening

The Community Placement Residential Facilities Regulation 83-77, under the Family Services Act, requires that an operator of a community placement residential facility conduct a criminal records check on each staff member or prospective staff member. The regulations define a community placement residential facility as a home (fewer



than three residents), a residence (more than three fewer than ten residents) and a residential centre (ten or more residents).

In addition, each operator must conduct a check with the Department of Family and Community Services on each staff member or prospective staff member. Such a check would reveal whether there had been a court finding, or a finding by the Minister (as a result of an investigation) that a person had endangered a child or adult's security or development. With respect to the above check the Minister is concerned only with the child or adult's security and development when the child or adult is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment.

An operator shall ensure that a check is conducted before the person becomes a staff member, shall ensure that a check is conducted on every staff member not later than five years after any previous check, and that a check is conducted sooner if the operator reasonably believes one is required.

An operator shall not employ a person as a staff member if the person has been convicted of an offence under any section of the Criminal Code listed in Schedule A or has been identified as falling within the scope of a check with the Department of Family and Community Services. Schedule A includes, among other things, offences such as sexual interference, invitation to sexual touching, sexual exploitation, child pornography, indecent acts, criminal negligence, murder, manslaughter, assault, sexual assault, and kidnapping.

For the purposes of the regulation, a staff member means a person who is employed to work in a community placement residential facility and includes an operator who is a primary staff member as well as volunteers. The regulations also impose basic competency requirements for both paid and unpaid staff.

The above provisions with respect to screening can also be found in the Day Care Regulation 83-85 and the Children in Care Services Regulation 91-170.

Human Rights Act

S.N.B. 1971 c. H-11

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. The New Brunswick Human Rights Act does not prohibit discrimination on the basis of criminal record.

Right to Information Act

S.N.B. 1978, c. R-10.3

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

9. NEWFOUNDLAND AND LABRADOR

Change of Name Act

R.S.N.L. 1990, c. C-8

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. With the exception of a name change being published in the provincial Gazette, there are no other controls or restrictions on name changes.

Child, Youth and Family Services Act

S.N.L. 1998, c. C-12.1

Purpose of the Legislation

This new piece of legislation came into force on January 5, 2000 and aims to implement programs and community services that are child-centred with a goal of prevention and early intervention. The Act makes it clear that every child is entitled to be assured of personal safety, health and well-being; the paramount consideration in any decision made under the Act shall be the best interests of the child; and the family is the basic unit of society responsible for the safety, health and well-being of the child.

The Department of Health and Community Services investigates incidents of abuse and ill-treatment of children and seeks appropriate measures to ensure the best interests of children are maintained. A child is defined as a person actually or apparently under the age of 16 years.

A child is in need of protection when the child is, or is at risk of, being physically harmed by the action or lack of appropriate action by the child's parent; being sexually abused or exploited by the child's parent; and being emotionally harmed by the parent's conduct. The definition also includes abuse by any other person but only when the child's parent does not protect the child. It should be noted that a child is in need of protection only in relation to its parents and not any other person, such as employees or volunteers from various day care or community-based agencies.

However, under the Act there is a duty on every person who has information that a child is or may

be in need of protective intervention, to immediately report the matter to a director, social worker or a peace officer. This is an explicit duty and extends to everyone who may come in contact with the child, such as a day care worker, health care professional, volunteer, teacher, social worker, counselor, or recreational worker.

Implications for Screening

Although there are no specific screening requirements for organizations whose employees and volunteers work directly with children, the Act does impose a duty on every resident of the province to ensure the safety of all children.

Child Care Services Act

S.N.L. 1998, c. C-11.1

Purpose of the Legislation

This Act establishes licensing requirements for child care organizations that provide direct services to children. A child is defined as a person under the age of 13 years, and child care means the care and supervision of a child by a person other than the child's parent, the child's guardian, the child's relative, the child's caregiver, or a person employed by the parent, guardian, relative or caregiver to care for the child in the child's home.

A person shall not operate or provide a child care service without having obtained a license from a director. A director may issue a license to a person to operate a child care service where the director is satisfied that the person intends to operate the child care service from premises which comply with health, safety and other standards required by this Act or the regulations, and has provided documents or other information required by the regulations. Pursuant to the Child Care Services Regulations (37/99), a licensee shall be in possession of a current certificate of conduct (obtained from the R.C.M.P.) for operators, staff and volunteers of a child care centre.

This conduct check does not apply to volunteers or employees when the children are not in attendance at that child care service. As well, the conduct check does not apply to a parent or guardian of a child who is present at a child care service (unless that parent or guardian is considered to be a part



of a required “adult to child ratio” prescribed under the regulations).

A director may refuse to issue or renew, suspend or cancel a license where he or she reasonably believes that the applicant does not meet the requirements for obtaining a license or where the child care service that is the subject of the application would not be operated in accordance with this Act and the regulations.

Implications for Screening

In order for a person to obtain a license for a child care organization he or she must have a current certificate of conduct from the R.C.M.P. for all staff including volunteers. How a conduct check is defined remains unclear. It is not clear what is involved in a conduct check, how the check is administered, or what happens in the event of misconduct. As well, the regulations do not indicate whether a licensee will be unable to hire an employee or a volunteer in the event of a misconduct found on their record. What is clear, however, is that the director has discretion to refuse to issue, suspend or cancel a license if he or she reasonably believes that the child care service is not operated in accordance with the Act and/or the regulations.

Freedom of Information Act

R.S.N.L. 1990, c. F-25

Refer to Section 4(c) for a discussion of this legislation and its implications for screening. This statute will shortly be replaced with the **Access to Information and Protection of Privacy Act** (S.N.L. 2002, c. A-1.1) that has not yet been proclaimed.

Homes for Special Care Act

R.S.N.L. 1990, c. H-5

Purpose of the Legislation

This statute regulates residential services and facilities for mentally and physically disabled adults, as well as nursing homes for the elderly. These facilities are operated independently of government, and although their employees must meet certain qualifications, they are under no legal obligation to carry out screening.

Implications for Screening

This statute does establish a residents’ “bill of rights”. Of relevance to screening are the rights of residents to be treated with courtesy and respect, to be properly cared for and to live in a clean and safe environment. While the statute makes no reference to screening, organizations providing residential care nonetheless have a legal duty to take all reasonable steps to ensure that the stated rights of residents are respected.

Human Rights Code

R.S.N.L. 1990, c. H-14

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. In Newfoundland and Labrador, a record of criminal conviction is not a prohibited ground of discrimination.

Neglected Adults’ Welfare Act

R.S.N.L. 1990, c. N-3

Purpose of the Legislation

This legislation is founded on the principle that all adults have the right to adequate care and protection from neglect. If an adult cannot provide adequate care for him or herself, the Department of Social Services has the authority to intervene on the adult’s behalf.

An adult is defined as a person who is not a child within the meaning of the Child, Youth and Family Services Act. A neglected adult is an adult who is not suitable to be in a treatment facility under the Mental Health Act, is not receiving proper care and attention, and refuses, delays or is unable to make provision for proper care and attention to him or herself.

Every person who has information that leads him or her to believe that an adult is a neglected adult has a mandatory duty to report such information to a director or a social worker.

Implications for Screening

Nothing in the Act explicitly imposes a responsibility or duty on organizations to screen applicants who work with vulnerable or neglected adults.

However, there is a duty on all individuals and organizations (employees and volunteers) to recognize neglected adults and to protect them from such neglect.

Victims of Crime Services Act

R.S.N.L. 1990, c. V-5

Refer to Section 4(g) for a discussion of this legislation and its implications for screening.

10. NORTHWEST TERRITORIES

Business Corporations Act

S.N.W.T. 1996, c. 19

Societies Act

R.S.N.W.T. 1988, c. S-11

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Change of Name Act

R.S.N.W.T. 1988, c. C-3

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. Any application to change a name in the N.W.T. involves a criminal records check.

Child and Family Services Act

S.N.W.T. 1997, c. 13

Purpose of the Legislation

The paramount objective of this Act is to promote the best interests, protection and well-being of children and to establish a framework for working with communities to develop plans to protect children.

A child is defined as a person who is or appears to be under the age of 16 years. A child is in need of protection where the child has suffered physical harm; been sexually molested or sexually exploited; or has suffered emotional harm by the child's parent or caused by the parent's inability to care and provide for or supervise and protect the child adequately. A child is also in need of protection when the child suffers from neglect; is exposed to repeated domestic violence; or there is risk that the child's health, emotional or mental well-being will be harmed.

The Act requires that a person who has information on a child in need of protection shall report the matter to a child protection worker, a peace officer, or an authorized person. This includes all employees and volunteers who may come in contact with a child, including teachers, bus drivers, nurses, social workers, doctors and counselors.



Implications for Screening

A person to whom a report is made shall investigate the child's need for protection and a "plan of care committee" shall be formed to develop a plan of care in respect of the child. This committee shall be composed of at least one person who has lawful custody of the child; the child (where over 12 years); one member of the Child and Family Services Committee; and one Child Protection Worker. A person who is to be a member of a plan of care committee is ineligible to sit as a member of the committee if he or she is a subject of a report or investigation under the Act; has been charged under the Criminal Code in relation to matters involving the child; has been convicted of an offence under the Criminal Code in relation to matters involving the child; or is subject to an order restraining him or her from having contact with the child.

It seems that this provision has been put in place to avoid having the person who perpetrated the abuse against the child to be part of the child's plan of care committee. Although the Act does address a type of screening, it is only in relation to the plan of care committee and does not extend to those employees and volunteers working directly with children.

Child Day Care Act

R.S.N.W.T. 1988, c. C-5

Purpose of the Legislation

The legislation sets out the legislative framework for organizations that provide licensed day care services. A child is defined as a person who is or appears to be under the age of 12 years. A child care facility is defined as an establishment where care, instruction or supervision is provided to five or more children by a person who is not a relative of a majority of the children. The Act does not apply where care is provided under a casual arrangement; by a school under the Education Act; by a hospital; by a religious congregation during religious services; or by a charitable organization during the conduct of a recreational program.

A person who wishes to operate a child day care facility must apply to the director for a license in accordance with the regulations. A person who is

the holder of a license is an operator. No operator shall employ a person who does not meet the prescribed qualifications to provide care, instruction or supervision to the children attending the child day care facility. Where the director believes on reasonable and probable grounds that the operator of a child day care facility or an employee or agent of the operator has contravened the Act, the director may suspend the license of the operator.

Implications for Screening

The Child Day Care Standards Regulation (R.R.N.W.T. 1990, c. C-3), requires every operator to require from every successful applicant for employment (casual or temporary staff) and every volunteer, a signed authorization granting the director access to information about that person's criminal record and permitting the director to convey that information to the operator. Where information obtained by the director shows that the person has been convicted of an offence respecting a child, the director shall inform and consult with the operator as to whether the person should be hired as a staff person or permitted to work as a volunteer for the child day care facility.

Under this statute there is no distinction between employees and volunteers – all persons who intend to work within a child day care facility must be screened. As the regulation suggests, rejection of an applicant on the basis of a criminal record is not automatic. Factors that may be taken into consideration are the nature of the offence, whether a pardon has been granted for the offence, and the type of responsibility assigned to the individual.

Fair Practices Act

R.S.N.W.T. 1988, c. F-2

Although bearing an unusual name, this is the equivalent of a human rights code in the N.W.T. Refer to Section 4(f) for a discussion of this legislation and its implications for screening. A criminal conviction for which a pardon has been granted is included as a prohibited ground of discrimination.

11. NOVA SCOTIA

Adult Protection Act

R.S.N.S. 1989, c. 2

Purpose of the Legislation

The Act provides a means whereby all persons in Nova Scotia who are sixteen (16) years of age and over, and who lack the physical or mental ability to care and fend adequately for themselves can be protected from abuse and neglect through the provision of services.

An adult in need of protection means an adult who, in the premises where he or she resides, is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting him or herself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his or her protection. The definition also includes an adult who is not receiving adequate care and attention, is incapable of caring adequately for him or herself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his or her adequate care and attention.

Every person who has information indicating that an adult is in need of protection has a positive duty to report such information to the Minister.

Implications for Screening

Nothing in the Act explicitly requires agencies to screen those people who work directly with vulnerable adults. However, there ultimately remains a duty on all individuals, whether employees or volunteers, to recognize and report the abuse and neglect of adults.

Change of Name Act

R.S.N.S. 1989, c. 66

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. Name changes are published in the provincial Gazette but apart from this there are few restrictions or controls related to criminal records checks.

Children and Family Services Act

S.N.S. 1990, c. 5

Purpose of the Legislation

The legislation aims to protect children from harm, promote the integrity of the family and assure the best interests of children. It grants authority to the Department of Community Services to take protective measures to address incidents of abuse and maltreatment of children and to take steps to protect the child from further abuse. In all proceedings, the paramount consideration is the best interests of the child.

The legislation defines a child as a person under the age of 16 years. A child is in need of protection where the child has suffered physical harm, been sexually abused, or suffered emotional harm, by a parent or guardian, or by another person where a parent or guardian of the child knows of the abuse and fails to protect the child. This definition also includes neglect, abandonment, and situations where the child has suffered physical or emotional harm caused by being exposed to repeated bouts of domestic violence.

The legislation dictates that every person who has information indicating that a child is in need of protection shall report that information to an agency. This includes every person who may come in contact with the child and includes doctors, nurses, dentists, teachers, principals, social workers, counselors, and volunteers or employees of day care facilities.

The Act applies to any organization and its operators that must be licensed by the Minister to provide child-caring facilities, child care services and foster homes. No person shall conduct, maintain, operate or manage such a facility that is not approved or licensed by the Minister. This includes Children's Aid societies, day care centres, group homes for children and residential facilities that provide services to children.

Implications for Screening

The legislation incorporates a Child Abuse Register that is designed to serve as a database where the names of individuals who have been convicted of an offence against a child under the Criminal Code



are maintained. These offences include, in part, sexual interference, invitation to sexual touching, sexual exploitation, causing death by criminal negligence, murder, manslaughter, attempted murder, assault, indecent exposure, abandoning child, aggravated assault, sexual assault, and kidnapping.

Information in the Child Abuse Register is confidential. Upon the receipt of a request in writing from a person or organization (looking to search the register) and with the written consent of the person to whom the request is related, the Minister may disclose information concerning a person applying to adopt a child or to be a foster parent, or a person (including a volunteer) who would be caring for or working with children.

Under the Children and Family Services Regulation, N.S. Reg. 183/91, the following persons may have access to the confidential information in the Child Abuse Register upon consent: any government department, board or agency that provides services to children; any corporation, society, agency or business that provides services to children; or any agency, child care service, child care facility, or child-placing agency under the Act.

Day Care Act

R.S.N.S. 1989, c. 120

Homes for Special Care Act

R.S.N.S. 1989, c. 203

These statutes provide for the licensing and operation of day cares, nursing homes and other residential care facilities. Operators must meet a variety of standards set out in this legislation, and while employees in day cares must have their names run through the Child Abuse Registry, there is no such duty to conduct a records check on employees in nursing homes or residential facilities.

Freedom of Information, Protection of Privacy Act

S.N.S. 1993, c. 5

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Human Rights Act

R.S.N.S. 1989, c. 214

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. In Nova Scotia, a record of criminal conviction is not a prohibited ground of discrimination.

Victims Rights and Services Act

S.N.S. 1989, c. 14

Refer to Section 4(g) for a discussion of this legislation and its implications for screening.

Volunteer Services Act

R.S.N.S. 1989, c. 497

Purpose of the Legislation

This legislation aims to protect from liability those individuals who voluntarily render services or assistance, should his or her actions result in injury or death in the course of such services or assistance.

A volunteer is defined as any individual, not in receipt of fees, wages or salary for the services or assistance, who renders services or assistance, whether or not that individual has special training to render the service or assistance and whether or not the service or assistance is rendered by the individual alone or in conjunction with others and includes an individual, corporation or organization that donates or distributes, for free, food or sundries to those in need.

Where, in respect of a person who is ill, injured or unconscious as a result of an accident or other emergency, a volunteer renders services or assistance at any place, the volunteer is not liable for damages for injuries to or the death of that person alleged to have been caused by an act or omission on the part of the volunteer while rendering services or assistance, unless it is established that the injuries were caused by gross negligence on the part of the volunteer. No proceeding shall be commenced against a volunteer that is not based upon his or her alleged gross negligence.

Implications for Screening

This Act is mentioned here, as it is fairly unique in Canada. Although the legislation does not require the screening of individuals who apply to work in positions of trust with vulnerable people, it does provide some protection against liability for volunteers whose actions may result in harm to such persons.

12. PRINCE EDWARD ISLAND

Adult Protection Act

R.S.P.E.I. 1988, c. A-5

Purpose of the Legislation

This statute provides provincial assistance and intervention to protect an adult, who is unable to protect him or herself, against neglect or abuse that could otherwise cause serious harm to that adult. The guiding principles of the legislation state that society has an obligation to afford its members, regardless of individual abilities or conditions, the opportunity to have security and necessities of life, and that adults afflicted with a disability that impairs their capacity deserve necessary treatment, care and attention that is most effective and least intrusive in nature.

Support and assistance is provided to adults who have attained the age of majority. An adult is in need of protection where intervention is required to preserve the essential security and well-being of the adult who is a victim of abuse or neglect, is incapable of fending for him or herself including the inability to provide necessary care, aid or attention, and refuses, delays or fails to arrange for necessary care, aid or attention.

Any person who has reasonable grounds for believing that an adult is in serious risk of being in need of assistance or protection may report such belief to an authorized person under the Ministry of Health and Social Services.

Implications for Screening

There is no requirement that organizations screen those employees or volunteers who work directly with vulnerable individuals. The legislation does place a duty on every individual who comes in contact with a vulnerable adult to report the suspicion of abuse or neglect but this duty is not mandatory.

Change of Name Act

S.P.E.I. 1997, c. 59

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. Apart from publication of the name change in the Royal

Gazette, there are no restrictions on changing names and no need for a police records check.

Child Care Facilities Act

R.S.P.E.I. 1988, c. C-5

Purpose of the Legislation

This statute regulates the licensing of child care facilities, which includes any place where child care is offered at any time to more than six children, more than five children all less than six years of age, or more than three children all less than two years in age. The Act does not apply to child care among family members, services regulated by the School Act, or child care provided by hospitals, churches or during children's camps or recreational programs.

The object of the Act is to assure safe and good quality child care through the regulation of day care facilities by the Child Care Facilities Board. The functions of the Board include (but are not limited to) the licensing of child care facilities, the monitoring of the operation of facilities and ensuring adherence to prescribed standards. Any person seeking to operate a child care facility must apply to the Board for a licence. If, at any time, the Board has reasonable grounds to believe that a facility is not operating within prescribed standards, the Board may revoke, suspend or place conditions on a licence.

Implications for Screening

The legislation does not require screening of any individual who applies for a license, the supervisor of a child care facility, nor the employees or volunteers who work directly with children at the care facility. Although the Board has the power to shut down a child care facility, it can only do so within its prescribed grounds relating to safe and quality child care – which does not include screening.

Child Protection Act

R.S.P.E.I. 2000, c. 3

This is new legislation in Prince Edward Island that, although introduced in 2000, has been extensively revised and has not yet been proclaimed into law. It is unknown what impact it will have on screening requirements, if any.

Community Care Facilities and Nursing Homes Act

R.S.P.E.I. 1988, c. C-13

Purpose of the Legislation

This statute regulates the licensing of community care facilities and nursing homes within Prince Edward Island. A community care facility is an establishment that provides care services for compensation to five or more residents who are not members of the operator's immediate family. A nursing home is defined as an establishment that provides continual residential accommodation with meals, housekeeping and nursing services for compensation, for five or more residents. The above definitions do not include a group home, residential school, hospital, correctional facility, addiction treatment facility, or a regional residential or nursing home.

The Act establishes the Community Care Facilities Board whose primary objective is to ensure the provision of accommodation, care services and nursing services that are safe, of good quality and appropriate to the needs of the residents.

The functions of the Board include (but are not limited to) licensing community care facilities and nursing homes; advising on standards for community care facilities and nursing homes and the care and services provided in them; and monitoring the operation of community care facilities and nursing homes and ensuring adherence to prescribed standards. A person or organization seeking to operate a care facility or nursing home must apply to the Board for a license. Where the Board reasonably believes the facility is not operating within the prescribed standards, it may revoke, suspend or place conditions on any license.

Implications for Screening

The regulations of the Act allow the Board to refuse, cancel or restrict the license of a facility if a manager or staff person has been convicted of an offence that presents a risk to the safety or welfare of residents. There are currently no specific regulations regarding screening, thus operators are free to determine their own screening measures.

Family and Child Services Act

R.S.P.E.I. 1988, c. F-2

Purpose of the Legislation

The goal of the Act is the protection of children from physical, mental, emotional or sexual mistreatment. In the administration of the Act, the best interests of the child shall be the paramount consideration.

A child is defined in the legislation as a person actually or apparently under the age of majority. The definition of a child in need of protection includes, in part, a child who is not receiving proper care, education, supervision, guidance or control; whose parent is unable or unwilling to care for the child; who has been physically abused, neglected or sexually exploited; whose emotional or mental health or development is endangered; and who is living in a situation of severe domestic violence.

The Act provides that every person who has knowledge to suspect that a child has been abandoned, deserted or abused must immediately report such circumstances to a director, peace officer, or child care worker.

Implications for Screening

The Act does not require screening for any individual, employee or volunteer, who works directly with children. There is, however, a mandatory duty on every person to recognize child abuse and report such abuse to the appropriate authority.

Freedom of Information, Protection of Privacy Act

S.P.E.I. 2001, c. 37

New in Prince Edward Island since the last publication of the The Screening Handbook, refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Human Rights Act

R.S.P.E.I. 1988, c. H-12

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. Recent

amendments have added sexual orientation and criminal records as prohibited grounds of discrimination.

Occupiers' Liability Act

R.S.P.E.I. 1988, c. O-2

Refer to Section 4(b) for a discussion of this legislation and its implications for screening.

Victims of Crime Act

R.S.P.E.I. 1988, c. V-3.1

Refer to Section 4(g) for a discussion of this legislation and its implications for screening.

Volunteers' Liability Act

R.S.P.E.I. 1988, c. Q-1

Purpose of the Legislation

This legislation aims to protect from liability those individuals who voluntarily render services or assistance, should his or her actions result in harm or in damage to property.

A volunteer is defined as any individual, not in receipt of fees, wages or salary for the services or assistance, who renders services or assistance, whether or not that individual has special training to render the service or assistance and whether or not the service or assistance is rendered by the individual alone or in conjunction with others.

Where, in respect of a person who is ill, injured or unconscious as a result of an accident or other emergency, a volunteer renders services or assistance, the volunteer is not liable for harm to that person alleged to have been caused by an act or omission on the part of the volunteer, unless it is established that the injuries were caused by the volunteer's gross negligence. No proceeding shall be commenced against a volunteer that is not based upon his or her alleged gross negligence. A similar limit on liability is imposed where the volunteer renders service or assistance to protect or preserve property, and that property is nonetheless damaged.



Implications for Screening

This Act is mentioned here, as it is fairly unique in Canada. Although the legislation does not require the screening of individuals who apply to work in positions of trust with vulnerable people, it does provide some protection against liability for volunteers whose actions may result in harm to such persons.

13. SASKATCHEWAN

Business Corporations Act

S.S. 1978, c. B-10

Companies Act

S.S. 1978, c. C-23

Non-profit Corporations Act

S.S. 1995, c. N-4.2

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Change of Name Act

S.S. 1995, c. C-6.1

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. There are no controls or restrictions on a name change application in Saskatchewan.

Child and Family Services Act

S.S. 1989-90, c. C-7.2

Purpose of the Legislation

The Act promotes the well-being of children in need of protection by offering services that are designed to maintain, support and preserve the family in the least disruptive manner. The purpose of the legislation is to prevent child abuse or neglect, help families stay together, and decide who will care for the abused or neglected child. At all times, the best interests of the child must be considered.

A child is defined as an unmarried person who is under 16 years of age. A child is in need of protection where as a result of an act or omission by the child's parent the child has suffered or is likely to suffer physical harm, emotional impairment, be exposed to a harmful interaction for sexual purposes, or be exposed to severe domestic violence. The definition also refers to circumstances where there is no adult person who is able and willing to provide for the child's needs, and physical or emotional harm to the child has occurred or is likely to occur.

Every person who has reasonable grounds to believe that a child is being abused or neglected

has a legal duty to report such abuse or neglect to any social services officer or peace officer.

Implications for Screening

The Act is silent on the issue of screening staff or volunteers who work with children. However, since the purpose of the legislation is the well-being and protection of children, an implicit duty on organizations to take reasonable measures to protect children appears logical.

Child Care Act

S.S. 1989-90, c. C-7.3

Purpose of the Legislation

This statute licenses and monitors the standards for child care centres, family child care homes, and group family child care homes. The Act does not apply to persons providing care and supervision in their own home to their immediate children or to a person who provides casual and irregular services.

No person shall operate a child care centre, family child care home, or group family child care home unless that person holds a license.

Implications for Screening

The Child Care Regulations 2001 (c. C-7.3 Reg. 2) require that an applicant for a license to operate a home (defined as a family child care home, a group family child care home, or a teen student support family child care home) must provide the results of a criminal records check for the applicant and every adult who resides in the home. This includes the consent of each person to disclose any relevant information contained in the criminal records check. Results of a criminal records check are also required for an assistant working in a group family child care home. Before an employee is hired to work in a child care centre, the licensee of the centre must obtain the results of a criminal records check for that person.

Licensees of homes and centres are required to keep accurate and up-to-date records on their employees which include the results of the employee's criminal records check.

There is nothing in the regulations that requires volunteers to be screened but if a volunteer is to

work in a centre or home he or she must be over 16 years of age.

Freedom of Information and Protection of Privacy Act

S.S. 1990-01, c. F-22.01

Local Authority Freedom of Information and Protection of Privacy Act

S.S. 1990-91, c. L-27.1

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Human Rights Code

S.S. 1979, c. S-24.1

Refer to Section 4(f) for a discussion of this legislation and its implications for screening. A criminal record is not a prohibited ground of discrimination in Saskatchewan.

Victims of Crime Act

S.S. 1995, c. V-6.011

Refer to Section 4(g) for a discussion of this legislation and its implications for screening.



14. YUKON

Access to Information and Protection of Privacy Act

S.Y. 1995, c. 1

Refer to Section 4(c) for a discussion of this legislation and its implications for screening.

Business Corporations Act

R.S.Y. 1986, c. 15

Societies Act

S.Y. 1987, c. 32

Refer to Section 4(a) for a discussion of this legislation and its implications for screening.

Change of Name Act

S.Y. 1987, c. 25

Refer to Section 4(d) for a discussion of this legislation and its implications for screening. While applicants for a name change in the Yukon must supply information about pending civil or criminal actions, there is no requirement to undergo a police records check.

Child Care Act

S.Y. 1989-90, c. 24

Purpose of the Legislation

The objectives of the Act are to foster the development of quality child care with parental and community involvement; to support a range of child care programming in the Yukon communities; and to recognize and support the aspirations of Yukon First Nations to promote and provide culturally appropriate child care services.

The Act also regulates the licensing of child care programs. A child care centre program is defined as a program that offers or provides child care, other than a preschool program or a school-age program, to four or more children in a place other than a family day home. A family day home program is defined as a program that offers or provides child care other than a preschool or school-age program in a home.

No person shall provide or offer child care centre programs, school-age programs, or family day home programs unless they have a license. Where a director is satisfied that a holder of a license (a person or organization) has contravened or failed to comply with any provision of the Act or regulations, or believes that a program described in a license is being operated and maintained in a manner that is hazardous to the health, safety, or well-being of children, he or she may suspend or revoke the license.

Any person providing a child care program, or a person employed by a person providing a child care program, who has reasonable grounds to believe that a child enrolled in the program may be abused, neglected or otherwise in need of protection within the meaning of the Children's Act shall immediately report the information to the director or a peace officer.

A child is defined under the Act as someone under the age of 12 except in cases where a person has special needs, and then a child is defined as a person aged 16 years or younger.

Implications for Screening

The Child Care Centre Program Regulations (O.I.C. 1995/087) and the School-Age Program Regulations (O.I.C. 1995/087) require that every applicant for a new child care centre or school-age program license must provide written permission to conduct a confidential police records check for a criminal record for the applicant and any worker or resident (over 18 years) of the child care centre or school-age program facility.

As well, the regulations set out specific staff qualifications that include (in addition to educational requirements) confidential police records checks for all workers and approval by the director for employment before they begin working in the program. The director may approve a worker for employment in the program pending the completion of the police check, and if a police check is complete, either confirm or revoke the approval.

The regulation does not define workers, so it is unclear whether volunteers are included in this screening procedure.

The Family Day Home Program Regulations (O.I.C. 1995/087) also require that every applicant for a new family day home program license provide permission to conduct a confidential police records check for a criminal record for the applicant and any worker or resident (over 18 years) of the family day home program facility.

Children's Act

R.S.Y. 1986, c. 22

Purpose of the Legislation

The purpose of this Act is to provide a framework for the welfare of children in the Yukon. The paramount consideration of the legislation is the best interests of the child. The Act is broad as it encompasses such things as custody, access and guardianship; child abduction; adoption proceedings; and child abuse and neglect.

A child is defined as a person less than 18 years of age, and a child is in need of protection when he or she is abandoned; when the parent or other person is unable or unwilling to provide proper care, supervision or control; when the child is in probable danger of physical or psychological harm; the parent or person involves the child in sexual activity; or when the child is deprived of the necessities of life or health.

A person who has reasonable grounds to believe that a child may be a child in need of protection may report the information to the director or a peace officer. Reporting by the general public is not mandatory in the Yukon.

Implications for Screening

The Act does not explicitly require screening for staff or volunteers in positions of trust with children. Nevertheless, given that the purpose of the Act is the welfare of children, the implicit duty to screen is clear.

Human Rights Act

S.Y. 1987, c. 3

Refer to Section 4(f) for a discussion of this legislation and its implications for screening.

Victim Services Act

S.Y. 1992, c. 15

Compensation for Victims of Crime Act

R.S.Y. 1986, c. 27

Refer to Section 4(g) for a discussion of this legislation and its implications for screening.



VOLUNTEER
BÉNÉVOLES
CANADA

Volunteer Canada
330 Gilmour Street, Second Floor
Ottawa, ON K2P 0P6
1 800 670-0401
www.volunteer.ca

Canada

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