

Bill 113 Passed: Implications of New Police Record Check Requirements in Employment

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Many organizations have a well-established practice of requiring potential employees and volunteers to provide police record checks when applying for certain types of positions. The purpose of these checks is to obtain information that will assist the organization in determining the suitability of the candidate, taking into account factors such as honesty, integrity and trustworthiness. However, the wide range of information that was being released in response to these record checks had the potential to be invasive to one's privacy, as well as raising concerns of potentially discriminatory treatment.

For some time, privacy, human rights and employment laws have attempted to limit how much personal information organizations could collect from applicants, volunteers and employees, as well as how the results could be used. This resulted in inconsistent and opaque principles struggling to govern how police record checks were conducted in Ontario and what type of information could be disclosed.

On December 1, 2015, the Ontario government passed Bill 113, the *Police Record Checks Reform Act, 2015 (the "Act")*, which limits the types of information that can be released by police record checks and standardizes disclosure procedures. Once the new legislation comes into force, it will prevent organizations from requesting police record checks except in the specific manner outlined in the Act.

Limited Disclosure

Previously, when potential employers carried out a police record check, they could in some cases receive a wide variety of non-conviction information, such as records of suicide attempts, mental health detentions, complaints where charges were never laid, withdrawn charges, as well as acquittals. Civil rights and mental health organizations argued that the release of these

forms of non-conviction records created barriers to education, employment, volunteering, and other opportunities. The new Act now specifically prohibits disclosure of mental health records, non-conviction records such as withdrawn or dismissed charges and acquittals, and records from police "carding" checks, except in limited circumstances.

The Act applies to the common purposes for which such checks generally are conducted, such as determining suitability in applications for employment, volunteering, licencing, education, holding office, and group membership. For these types of uses, the Act creates three categories of checks:

- criminal record checks;
- criminal record and judicial matters checks; and
- vulnerable sector checks.

In a standard criminal record check, only criminal convictions and findings of guilt under the *Youth Criminal Justice Act* can be disclosed. A criminal record and judicial matters check could disclose additional information such as conditional discharges for up to three years, absolute discharges for up to one year and outstanding warrants.

For a vulnerable sector check, which are checks conducted when an individual is in a position of trust or authority over vulnerable persons like children or the elderly, certain additional non-conviction information could still be disclosed. However, the disclosure would need to satisfy the criteria for "exceptional disclosure", which requires police to conduct a more in-depth review of the circumstances of the request and the relevance of the information.

Standardized Procedure

In addition to limiting categories of disclosure, the Act also describes how to request a police record check, how to respond, as well as the proper scope and manner of disclosure. For example, the Act specifies that a person or organization that receives information in response to a police record check shall not use or disclose it except for the purpose for which it was requested or as authorized by law.

Notably, the Act requires that the results of the check have to first be disclosed to the individual who is the subject of the check. That person is then given an opportunity to review the results of the check before the information is released to the employer or voluntary organization that made the request. Under the legislation, a record will only be released to a third party after the person who is the subject of the check consents to its release. If the person believes, for example, that non-conviction information is unjustly included, there is a reconsideration process available.

Implications for Employers and Employees

The Act is not yet in force, but will likely receive proclamation in the near future. When it does, it is expected to have a significant impact on hiring practices for employers. Employers requesting criminal record checks will no longer be provided with information about mental

health orders or non-conviction records, except in limited circumstances, and employees will have more control over the process of releasing information to a potential employer.

Employers should familiarize themselves with this new law and begin to prepare for new administrative and organizational steps to incorporate the changes that it will necessitate. The wilful contravention of certain provisions of the Act by a person or organization is an offence and can result in a fine of up to \$5,000 upon conviction. However, a prosecution cannot be commenced unless the Minister of Community Safety and Correctional Services consents.