



Update on New Police Records Check Legislation

It is not uncommon to request or be required to agree to a criminal background check prior to securing employment, volunteering or beginning an internship position. Recent legislative changes have clarified how much information can be requested by Ontario employers and how that information can be used. In December 2015, the Ontario government responded to concerns by passing the Police Record Checks Reform Act, 2015 (the “Act”). While the Act addresses several different situations, including getting a license, applying to certain educational programs, and volunteering, it is especially important to an employment scenario, because employers may now be limited in the information they are now able to receive and request, and carry the burden of complying with the new laws.

In response to a growing public concern over privacy and confidentiality, lawmakers critically assessed the necessity of providing information that could cause potentially discriminatory treatment. What resulted, and is now law, is a three-tiered system of record checks that help balance an employer’s right to knowing the suitability of a candidate, and that candidate’s right to privacy and confidentiality. In the new system, employers can request one of three different categories of checks:

1. Criminal record checks;
2. Criminal record and judicial matters checks, and
3. Vulnerable sector checks.

In the first category, a standard criminal record check, only criminal convictions and findings of guilt under the Youth Criminal Justice Act may be disclosed. The second category provides for the same disclosure as the first category, but also provides additional information such as any outstanding warrants, if the individual has received conditional discharges within the last three years, and absolute discharges within the past year. A vulnerable sector check is limited to employers and organizations that are seeking individuals to be in a position of authority and power over vulnerable persons, such as the elderly or children. In this category some “non-conviction” information can be disclosed, including convictions that received an absolute discharge or findings of ‘not criminally responsible’ on account of mental disorder. While this category obviously provides much more confidential information, a balance is struck by requiring police to individually determine, on a case-by-case basis, whether this information is necessary and relevant to the requesting party.

Beyond the three new categories, the Act also provides for a standardized procedure of disclosure, including the requirement that the results of any record check be disclosed to the individual subject of the check, and not the requesting party. The information will only be released to third parties, including employers, if the subject consents. If the individual is dissatisfied with the results of the check and thinks, for examples, that information is included unjustly, there is a process for reconsideration available.

Employers need to be aware that when the Act takes effect, much of the information that was previously available will no longer be produced. Specifically, non-conviction information such as records of suicide attempts, mental health detentions, complaints where charges were never laid, withdrawn charges, and acquittals, will only be provided in very limited circumstances. Employers are advised to familiarize themselves with this new law to ensure compliance. The Act also accounts for any willful non-compliance to be met with a fine of \$5,000.00.

Kevin Robinson will be presenting to Barrie HRP
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www.hrpa.ca

