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Check It Out!
Ontario's Police Record Check Legislation
Comes into Force November 1, 2018

In the first quarter of 2016 we wrote about the *Police Record Checks Reform Act, 2015* (the “*Police Record Checks Act*”) - new legislation to standardize the process by which police record checks are requested, conducted and obtained in Ontario. Although the *Police Record Checks Act* was passed and received Royal Assent on December 3, 2015, it lay dormant waiting to be proclaimed into force. On November 1, 2018, after almost three years, the legislation will finally be proclaimed into force.

Subject to certain exemptions (see below), the *Police Record Checks Act* applies to every person who requires a police record search to be conducted for the purposes of determining suitability for employment, volunteer work, a license, an office, membership in any body, to provide or receive goods or services or for the purposes of assessing an application to an educational institution or program. Every individual in charge of carrying out or overseeing police records checks should therefore be familiar with this legislation. Failure to follow the new rules could result in a fine of up to \$5,000.

Standardizing the Process

Until this new legislation, police record checks were conducted across Ontario in an inconsistent manner with each police service having its own protocols regarding the process and type of information disclosed. When a potential employer requested a police record check it might receive sensitive information such as records of suicide attempts where police were called, mental health detentions, complaints where charges were never laid, withdrawn charges and acquittals.

The *Police Record Checks Act* specifically prohibits disclosure of any charge for which an individual was found not criminally responsible on account of a mental disorder and non-conviction information, except in limited circumstances.

The *Police Record Checks Act* also prescribes how to request a record check, how to respond, and the proper scope and manner of disclosure. For example, a person or organization that receives

information in response to a police record check shall not use or disclose the information except for the purpose for which it was requested or as authorized by law.

It is also worth mentioning the individual being ‘checked’ now has the final say whether to disclose the results of a police record check to a potential employer.

Types of Police Checks

The *Police Record Checks Act* provides for three types of police record checks:

- **Criminal record check:** Discloses any criminal conviction for which a pardon has not been granted (including any summary conviction if issued within five years after the request), and any finding of guilt under the *Youth Criminal Justice Act* (subject to certain limitations in the *Youth Criminal Justice Act*).
- **Criminal record and judicial matters check:** Everything a criminal record check discloses PLUS any offence for which the individual received an absolute discharge (if issued within one year of the request), any offence for which the individual received a conditional discharge (if issued within three years of the request), every court order made against the individual (subject to certain limitations), and every criminal offence for which there is an outstanding charge or warrant to arrest the individual.
- **Vulnerable sector check (for individuals working with children or vulnerable persons):** Everything a criminal record and judicial matters check discloses PLUS every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder, and any non-conviction information authorized for exceptional disclosure (the *Police Record Checks Act* provides various examples such as whether the individual targeted a child or vulnerable person).

Regulations

At present, there are four regulations, each addressing one of the following:

- Disclosure of youth records.
- A process whereby an individual who receives his/her record check can object to the inclusion of non-conviction information and have the report reconsidered by the record check provider.
- Additional, specified criminal offences about which non-conviction information will be disclosed on a vulnerable sector screen, if an individual is charged with a prescribed offence but not convicted.
- Exemptions. The *Police Record Checks Act* applies to most employment related searches. However, the act and regulations identify a number of exemptions primarily related to law enforcement and certain other regulatory bodies, as well as the licensing of individuals who will

provide services to vulnerable members of society such as children. The exemptions are extensive and not entirely straight-forward. Accordingly, before concluding your organization is exempt from any portion of the *Police Record Checks Act*, we recommend you seek legal advice.

Compliance

Not yet in compliance with the *Police Record Checks Act*? It's never too late.

The first step is to review and update any existing documentation used to facilitate a police record check (or if none exist create it). This might include workplace policies and template employment agreements. For some organizations, the requirement to conduct a check, including the type of check, is mandated by law.

The second step is to train (and retrain) individuals in your workplace responsible for requesting record checks on the **new procedures** including **how the results of a police record check can be used**.

Finally, it is important to ensure appropriate measures are in place throughout the process to **protect privacy**.

To learn more about the *Police Record Checks Act* and/or for assistance, contact a member of the Sherrard Kuzz LLP team.

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Check It Out! Ontario's Police Reference Check Legislation Comes into Force November 1, 2018 – Current as of November 2018

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